

THE  
GERMAN CONSTITUTION  
—  
NICHOLSON.

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February 1875 —

THE  
GERMAN CONSTITUTION

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A SKETCH  
OF THE  
GERMAN CONSTITUTION  
AND OF THE  
EVENTS IN GERMANY  
FROM 1815 TO 1871

BY  
A. NICOLSON  
THIRD SECRETARY IN HER MAJESTY'S EMBASSY AT BERLIN

LONDON  
LONGMANS, GREEN, AND CO.  
1875



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## PREFACE.

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IN placing before the public this sketch of the Constitution of the German Empire, I by no means lay claim to having done adequate justice to so important a subject. My object has been merely to give English readers some idea of how a country, holding so prominent a position in Europe, is governed. Germany now occupies so much the attention of public men in all countries, that I thought a short explanation of the form of its Constitution might be acceptable to those who have neither the leisure nor the inclination to wade through the elaborate works which German writers have published on the subject. To those who are anxious to acquire a thorough knowledge of the Constitution I would recommend the following books for perusal: ‘Das Verfassungsrecht des Deutschen Reiches,’ by Rönne; ‘Die Verfassung des Deutschen Reiches,’ by Von der Heydt; ‘Das Verfassungsrecht des Norddeutschen Bundes,’ by Thudichum; ‘Die

Verwaltungseinrichtungen in Elsass-Löthringen,' and 'Die Annalen des Deutschen Reiches,' by Hirth.

To render the origin of the Constitution, and the cause which led to its establishment, clear to my readers, I found it necessary to give a rapid survey of the events which occurred in Germany from the year 1815 to the year 1871, and to avoid a break in the narrative I placed the sketch of the Constitution of 1867 after the chapter on the events from 1867–1871, though, chronologically speaking, it should have preceded it. The present Constitution is, with a few exceptions, identic with that of 1867; I have therefore devoted more space to the former, and then pointed out the alterations which were rendered necessary by the admission of the South German States into the North German Confederation, and by the transformation of the latter into the German Empire. I must, therefore, beg my readers to remember that in reading of the Constitution of 1867, they have the present Constitution before them, and not to imagine that, because I have been compelled to use the past tense throughout, the Constitution has been in any way altered, except in the instances which are afterwards mentioned.

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SKETCH  
OF THE  
GERMAN CONSTITUTION.

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CHAPTER I.

Introduction—The Federal Act of 1815—The Diet—The Plenum Court of Austrägal Instanz—Representative Assemblies—Article XI. of Federal Act—Meeting of the Diet—Congress of Carlsbad—Final Act of Vienna—Revolt in Brunswick—Sympathy with the Polish Revolution—Conferences at Vienna—Camp at Kalisch.

On the establishment of the Rhine Confederation under the protection of Napoleon I. in 1806, the Emperor Francis II. resigned the Imperial crown, and declared the German Empire to exist no longer. The Confederation of the Rhine, which increased in numbers till it embraced the whole of Germany, with the exception of Austria, Prussia, Swedish Pomerania, and Holstein, gradually melted away when the tide began to turn against the French arms. ‘Germany was now utterly disintegrated. The Holy Roman Empire had ceased to exist; the Confederation of the Rhine had followed it; and from the Black Forest to the Russian frontier there was nothing but angry ambitions, vengeances, and fears. If there ever was to be peace again in all

CHAP.  
I.

Introduction.

CHAP.  
I.

these wide regions, it was clearly necessary to create something new.<sup>1</sup>

The reorganisation of Germany formed then one of the principal subjects of negotiation at the Congress of Vienna, and the result of the labours of the statesmen and diplomatists engaged on this work was the Federal Act, bearing date June 8, 1815, and which was placed under the guarantee of eight great European Powers.

Without examining the negotiations which led to the formulation of the Federal Act (Bundes-Akte), on which was based the German Confederation, we will turn to the Act itself, and sketch some of its principal features.

The Federal  
Act, 1815.

The Diet.

The object of the Confederation was stated to be the maintenance of the external and internal security of Germany, and the independence and inviolability of the several German States. The affairs of the Confederation were entrusted to an assembly, of which Austria was president, and which is best known under the name of the Diet. The Diet consisted of seventeen members, the larger States having each one vote, and the smaller ones voting in groups. The votes were divided in the following ratio : Austria 1; Prussia 1; Bavaria 1; Kingdom of Saxony 1; Hanover 1; Wurtemburg 1; Grand Duchy of Baden 1; Electorate of Hesse 1; Grand-Ducal Hesse 1; Denmark, for the Duchies of Holstein and Lauenburg, 1; the Netherlands, for Limburg and Luxemburg, 1; the Duchies of Saxe-Mein-

<sup>1</sup> *Sketches in European Politics*, by Grant Duff, p. 257.

ingen, Saxe-Coburg Gotha, and Saxe Altenburg 1 ; Brunswick and Nassau 1 ; Mecklenburg Schwerin and Mecklenburg Strelitz 1 ; Oldenburg, Anhalt, and the two Schwarzbuchs (Rudolstadt and Sonderhausen) 1 ; Lichtenstein, Reuss, Schaumburg-Lippe, Lippe Detmold, Waldeck, and Hesse Homburg 1 ; the free cities Lubeck, Frankfort, Bremen, and Hamburg 1.

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I.  
1815.

When any change was proposed in the fundamental laws of the Confederation, or when any determination had to be arrived at on important questions affecting the general national interests, the Diet was formed into a Plenum consisting of sixty-nine members, in which the larger Powers had several votes, according to their size, and the smaller States one vote each. The majority of voices in the smaller assembly decided what questions should be submitted to the Plenum. In the smaller assembly an absolute majority was sufficient to decide a question, while in the Plenum a two-thirds majority was always necessary. The seat of the Diet was to be at Frankfort-on-the-Main.

The right to form alliances with foreign powers and with each other was reserved to members of the Confederation, with the proviso that such alliances were not detrimental to the general interests. Provision was made for a court which could settle differences between members of the Confederation, but the proposal to create a real court of arbitration failed, owing to the opposition of Wurtemburg,

The  
Plenum.

Court of  
Austrägal  
Instanz.

CHAP. I. Bavaria, and Hesse Darmstadt. This court was termed Austrägal Instanz.

1815. When two confederate States had disputes between each other, they chose the highest court of Justice of some third State, which was then called Austrägal Gericht, to which was entrusted the settlement of the dispute. The execution of its decrees was in the hands of the Diet.

Representative assemblies. Each State was to establish representative provincial diets. The attempts made by Austria, Prussia, and Hanover, that the constitution and functions of these representative assemblies should be submitted to the approval of the Diet, were defeated by Bavaria, Wurtemburg, and others, who considered it a question which each State should settle for itself, and they would only permit of an article being inserted in the Federal Act stating that these assemblies were to be established throughout Germany. This article (Article 13) gave considerable trouble to the several States. In most States these assemblies were not instituted; at any rate, not on the intended basis; some old representative bodies were revived, and in certain instances some feeble uncertain steps were made towards the formation of a representative system, but nothing more. In Prussia a deputation was sent by the Government into the provinces to sound the feelings and opinions of the people in this matter.

Other articles in the Federal Act related to the establishment of tribunals of justice, to the position

and privileges of the several princely houses, of the members of the cathedral chapters, and of the German orders, and to the mutual intercourse between the inhabitants of the different States. The rights of the mediatised princes, and of the former nobles of the empire (Reichs-adel) were settled by Article 14 in a manner not quite satisfactory to them, but which placed them in a better position than they held in the time of the Rhine Confederation. The laws which should govern the commerce, the postal arrangements, the means of communication, the military system, &c. of the States were left to future deliberation, while the civil rights of Germans were almost uncared for.

Perhaps the most important article of the Federal Article XI. Act is Article XI.; and as it was frequently appealed to in 1864 and in 1866, it may be as well to give its full text.

‘Every member of the Confederation promises to protect all Germany as well as each individual confederate State against every attack, and to guarantee mutually to each other all their possessions comprised in the Confederation. When war has once been declared by the Confederation, no member can enter on individual negotiations, or conclude a truce or peace individually. The members of the Confederation retain the right of forming any alliance, but bind themselves not to make any engagement directed against the safety of the Confederation, or any of its members. The members of

CHAP.

I.

1815.

CHAP.  
I.  
1815.

the Confederation engage not to make war on each other on any pretext whatsoever, nor to settle their differences by force, but to lay them before the Diet. It then becomes the duty of the latter to attempt a reconciliation through a commission, and in case this attempt should fail and a judicial decision become necessary, to bring this about by a properly instituted Austrägal Tribunal, to whose sentence the contending parties are bound instantly to submit.'

Condition  
of the Con-  
federation.

The Federal Act was drawn up hastily, and left much unfinished. Prussia—more, indeed, than the other Governments—desired that a greater extension should have been given to it. Even at this early period she gave indications of that policy which, with the exception of a few rare intervals, she has since steadily pursued, by making an effort, slight, it is true, to form Germany into a Federative State (Bundes Staat) instead of a Confederation of States (Staatenbund). The time had not yet come for this; and the idea was chimerical and its execution impossible as long as she and Austria were members of one Confederation. The Confederation, as now constituted, consisted of loose, heterogeneous elements, with little life and less cohesion. But the circumstances under which it was established rendered this perhaps unavoidable. After the terrible events of the last twenty years, men's minds had not recovered their ordinary calmness and soundness of judgment. *Something* must be immediately instituted which should give the form of government and

certain degree of unity, and round which Germans could rally, although the true attributes of government were wanting. It was better to have an imperfect and incomplete Confederation for a time than to have none at all. The avowedly temporary nature of the constitution of the Confederation has induced me merely to glance at its principal features. In examining the Final Act of Vienna, which came into force five years later, we shall see that all that was worthy of being retained from the Federal Act was renewed in the former.

CHAP.  
I.  
1815.

The Diet, which should have been opened on September 1, 1815, did not meet till October 1, 1816. It was at first determined to publish the protocols of the meetings with certain exceptions ; but the exceptions gradually became more numerous, and the publication was more strictly limited by the Decree of July 1, 1824. The Diet was *en permanence* ; but during the annual vacation of two months a commission of three members sat who disposed of the current business.

Meeting of  
the Diet.

The three years following the opening of the Diet offer nothing of very great interest, with the exception of the peace of Aix-la-Chapelle (1818), the importance of which was to some extent diminished by the Congress at Carlsbad of the next year. This Congress must not be passed over in silence.

The year 1819 opened gloomily in Germany. Considerable agitation and distress prevailed everywhere. Men hoped that after their trials and suffer-

Congress of  
Carlsbad.

CHAP.  
I.  
1816-19. ings in the war of liberation they would enter upon a freer political life. Great things had been expected from the Congress of Vienna. A united Germany, liberal institutions, representative assemblies, the attainment of those rights to which every free man had a claim—*habeas corpus*, removal of religious disabilities, liberty of the press and of education, &c.—these had been the dreams of every German. Their disappointment was bitter when they found that Germany was united but in name, that the representative assemblies, though promised, came into existence but in a few instances, and then in a cramped and crippled condition ; that the acquisition of civil rights was as far off as ever. No wonder that discontent was almost universal. But with the exception of one or two isolated acts of violence, of which the murder of Kotzebue may be cited as the one which created the most excitement in Europe, no outbreak took place. The Governments, however, were conscious of the deep-rooted and widespread dissatisfaction, and filled with fear of the revolutionary ghost, which, as Stein remarked to Gagern, ‘Cowardice evokes and cunning makes use of.’ The representatives of nine Confederate States met at Carlsbad in August 1819 to devise measures for repressing the unruly spirit which, though at present quiet, was at any moment ready to break forth.

The resolutions of this Congress, which were at once accepted by the Diet, were directed to four

points ; in these lay the chief danger, to guard against which, some active measures must be at once taken. CHAP.  
I.  
1816-19.

The points were as follows :—

1. The uncertainty respecting the meaning and scope of Art. 13<sup>1</sup> of the Federal Act, and the misapprehension which arose therefrom.
2. The misconceptions concerning the authority of the Diet, and the insufficiency of the means by which this authority could be enforced.
3. The imperfections in the School and University system.
4. The misuse of the Press ; and especially the mischief produced by newspapers, periodicals, and pamphlets.

The 13th Article had given rise to considerable misapprehensions and difficulties, which at one time threatened to become dangerous to the existence even of the Confederation. The desire to establish representative assemblies in the several confederate States, based upon the same system of election, proved almost impossible of realisation. The amalgamation of several of the smaller States into one electoral body presented great difficulties ; as in some States assemblies had already been in existence, whilst in others they were almost entirely unknown. The door which these assemblies opened to democracy, the encroachments they would be able to make on

<sup>1</sup> The Article which established representative assemblies in each State.

CHAP.  
I.  
1819.

the privileges and rights of the Confederation itself, terrified the monarchical supporters in the Diet. But the Governments, and especially those of the Middle States,<sup>1</sup> were unwilling to lose any little popularity they might possess amongst the people by entirely withdrawing the privilege of representative assemblies; they therefore preferred to take a middle course. The Diet renewed the declaration that these Assemblies were to be instituted, but this declaration does not appear to have had much effect.

The right of the Diet to order executions in recalcitrant States, and to step in between a ruler and his subjects, if there was danger of the public order being disturbed, was re-affirmed. Almost unlimited power was placed in the hands of the Diet in this respect. A central enquiry commission was established at Mainz to detect conspiracies and to punish offenders.

To watch over the Universities a Government delegate was appointed whose duty it was to supervise the conduct, mode of teaching, moral and political principles of the professors and students. This tyrannical act was probably justified in the eyes of the Government and their supporters by the Circular Note of Count Bernstorff, in which he terms the Universities 'poisonous wells.'

The powers of the censor were to be increased, and the press supervised in the severest manner.

<sup>1</sup> The middle States were Saxony, Bavaria, Wurtemburg, Hanover and Baden, Electoral Hesse and Hesse Darmstadt.

These were the resolutions which the Diet immediately commenced to put in force, but, as might be expected, they were too severe to have any other effect than that of strengthening the spirit of resistance. The arrests which proceeded by the orders of the Mainz Commission with exemplary frequency and impartiality, proved how groundless were the revolutionary fears which the Governments had endeavoured to spread throughout Germany; and the Commission, to avoid becoming ridiculous, gradually ceased its labours.

CHAP.  
I.  
1819.

It was, however, quite evident that the Constitution, as laid down in the Federal Act, must be thoroughly revised. Late events had shown too clearly how utterly inadequate it was to the times. On November 25, 1819, representatives from the various German Governments met at Vienna, and the conferences continued until May 24, 1820. The result of their labours was the Final Act of Vienna (Wiener Schluss Akte), and which was ratified in the Plenum, June 8, 1820, and the same power and validity given to it as was possessed by the Federal Act. The character, functions, and position of the Confederation were more closely defined, and an endeavour was made, in many instances with considerable success, to clear up some doubtful points which the Federal Act had left in uncertainty. The definition of the Confederation was most careful: 'The German Confederation is an international society of the German sovereign princes, and of the

Final Act  
of Vienna.

CHAP.  
I.  
1820.

free towns, for the preservation of the independence and inviolability of the States which compose the Confederation, and for the maintenance of the internal and external security of Germany. This union, with regard to its internal affairs, is a corporation of self-dependent, and with regard to each other, independent States, with mutual treaty rights and obligations ; and is, with regard to external affairs, a politically united Power.<sup>1</sup>

I will now proceed to examine the Final Act a little in detail. This elaborate Act consisted of sixty-five articles, which we may group under the following headings. Articles 1 to 34 relate to the constitution and sphere of action of the Confederation, and to the rights and duties of the Diet. Articles 35 to 52 concern the foreign relations and military system of the Confederation. The remaining articles have reference to various matters governing the internal relations of the members of the Confederation.

The smaller assembly and the Plenum were still maintained, though the action of the latter was a little more limited. In the latter assembly no consultation or debate was to take place : a vote alone was to be taken as to whether a resolution arrived at in the smaller council was to be accepted or not. A simple majority decided in the smaller council, but in the Plenum a majority of two thirds was necessary.

Engere  
Rath and  
Plenum.

<sup>1</sup> Articles 1 and 2, Wiener Schluss Act.

The right of the Diet to interfere in disputes between the head of a State and his subjects was put very decidedly and clearly, and it may not be thought out of place to quote the whole article : ' If the internal order of a State of the Confederation is disturbed by the opposition of the subjects against their head, and a spread of revolutionary movements is to be feared, or if an actual revolt has broken out, and if the Government, after having exhausted all constitutional and legal means, appeals to the Confederation for assistance, the Diet is to take steps for immediately aiding in the restoration of order. If in the last case the Government is notoriously incapable of subduing the revolt with its own forces, and if it should be prevented by circumstances from calling in the help of the Diet, the latter, even though not appealed to, is equally bound to intervene for the restoration of order and safety.'

The differences between States were to be referred, as before, to a third member of the Confederation, or to a committee of that body. War between two States was therefore considered impossible; and it is well to bear this in mind when we come to the events in 1866. Any attack by a foreign Power on one member of the Confederation was considered as affecting all the States, and measures were to be taken for the common defence; though if a State which had territories outside the Confederation waged war in its character as a European Power, the Confederation was to remain

CHAP.  
I.

1820.

Article 26.

CHAP.  
I.

1820.

Treaty-making  
power.

a stranger to such a war. The negotiations for a treaty of peace were entrusted to a committee, and ratification by the Plenum was of course necessary.

Sir A. Malet, in his work on the 'Overthrow of the Germanic Confederation' remarks, that no treaty was ever made by the Diet, but various conventions contracted by the several members of the Confederation with each other and foreign States, such as treaties of extradition, postal and copyright conventions, after they had been ratified were laid before the Diet, not wholly as a matter of form, for when recognised by the assembly they thereby became binding on all members of the Confederation.

The Confederation could receive from, and send representatives to, foreign States, though the latter right, according to the protocol of the Vienna conferences, was to be exercised only in exceptional cases.

Represen-  
tative  
Assemblies

A strenuous attempt was made to breathe some life into the representative assemblies, and to establish them on a firm basis; but the Governments were unwilling to give way in any sensible degree on this point. The president of the Diet, indeed, in his opening speech pointed out the groundlessness of the fears of those who thought that these assemblies would prove a danger to the Confederation, and to monarchical institutions, and declared it to be one of the first and most pressing duties of the Diet to establish them on a solid and durable basis. But

the middle States especially, probably supported by Russia, were strongly opposed to any curb on the power of the princes. These assemblies cannot be said ever to have exercised any influence.

CHAP.  
I.  
1820.

An attempt was made to improve the military system, but without much success. The Federal army, as is well known, existed chiefly on paper, and its organisation was so clumsy and defective that when called into action, it hampered rather than aided the execution of the designs for which it was summoned. Each State paid a sum into the Federal state in proportion to its population. There were two chests: a Federal war chest and a Federal pro-rata chest (Matrikular-Casse). From the latter the expenses of the army during peace time were paid. The army was to be divided into army corps, of which the Austrian army formed the 1st, 2nd, and 3rd corps, and that of Prussia the 4th, 5th, and 6th. Those States which were not large enough to form an army corps were to furnish contingents to some other corps; the number of men of which these contingents were to consist being calculated on the population.<sup>1</sup> The commander-in-chief during war time was to be selected by the Diet, and he was to relinquish his command immediately on cessation of hostilities. The want of one sole head to the army was alone sufficient to render impossible the fulfilment of any scheme of organisation.

Military  
system.

<sup>1</sup> Some of these contingents were not very large. Lichtenstein furnished 55 men.

CHAP.  
I.  
1820.

Customs  
union.

The Final Act was no doubt a great step in advance of the Federal Act, but it can in no way be considered as a satisfactory Constitution for a great country like Germany, composed of so many diverse States. The postal arrangements, the railway systems, customs, taxes, and commerce, navigation of rivers, &c., &c., all those questions which touch men closely in the ordinary relations of life, were left unnoticed. This is doubtless owing to the fact, that it was almost impossible to reconcile the conflicting interests on all these points. The smaller States clung closely to their separate administration, however destructive this might be of free development. The Society of Merchants and Manufacturers which was formed in Frankfort in 1819, desired a General Customs Union for the whole of Germany. The Diet, however, did not accept the proposition, although Prussia was strongly in its favour. It was not till 1828 that Bavaria formed a Customs Union with Wurtemburg; and her example was quickly followed by Prussia, who concluded a Union with Hesse Darmstadt. These steps induced Hanover, Electoral Hesse, and Saxony to enter into a middle German Union. In the following year (1829), owing to the exertions of V. Cotter, the greatest bookseller in Germany, an amalgamation of the North and South German Unions was effected at Berlin.

But a rapid glance must suffice for the interval between the Final Act of Vienna and the great re-

volution of 1848. The revolution of 1830 had but little effect in Germany, and it would be beyond the scope of this work were I to detail all the events which occurred in Germany during these twenty-eight years.

CHAP.  
I.  
1820-48.

Inefficiency  
of the Diet.

The discussions of the Diet were most dreary and unprofitable. It passed many resolutions stating the high and noble objects it had in view, but at the same time it rarely, if ever, came to any practical conclusion. An exception should be made with regard to the settlement of the navigation of several rivers ; the most important of which was the Rhine. The Mainz Navigation Act of March 31, 1831, settled the complicated questions involved in the latter case. Occupied chiefly with the complaints and squabbles of the smaller States, either between themselves or between their Governments and the representative Assemblies, the Diet frittered away its time in such small matters. Austria and Prussia made it a tool wherewith, in the apparent interests of public order and morality, severe repressive laws might be passed. With such a central power, and loaded with the chains of the Carlsbad resolutions, it was impossible for Germany to become a free and prosperous country.

The only case of open revolt which occurred in 1830 was in Brunswick. The duke of this country, by his dissipated and extravagant life, as well as by his foolish and tyrannical government, had raised

Revolt in  
Brunswick.

CHAP.  
I.  
1820-48. much enmity against his person. But the revolutionists who forced him to fly the country, and who burnt his palace down, were rather animated by personal dislike than by any political motives. His brother William took the reins of government, and was recognised by the Diet. In some of the other smaller States disturbances broke out; but they were quickly suppressed, and had no further results.

Further  
severe reso-  
lutions of  
the Diet.  
1832.

The Diet had been rather uneasy when the news of the neighbouring revolution arrived, but seeing that the danger was passing away, and that order had been re-established in France, it took steps to guard against liberal ideas making any further progress. By the resolutions of June 28, 1832, popular meetings and festivals were forbidden, the Carlsbad decrees were renewed, and a strict police supervision of foreigners was ordained. These measures called forth protests from many of the representative Assemblies, which, however, it is needless to say, remained unanswered. Indications were not, however, wanting of the dissatisfaction with the existing state of things, and an attempt was made in the spring of 1833 to dissolve the Diet by force; but the attack was easily repulsed by the troops, and the leaders of the riot arrested.

Sympathy  
with the  
Polish re-  
volution.

The Polish revolution had found many sympathisers in Germany, and a great meeting had been held in Bavaria, at which many Polish and

French refugees assisted, when resolutions were passed in favour of a German Republic. The relations between the revolutionary party in Poland and their friends in Germany were becoming so intimate, and the expression of their views so open, that the Emperor of Russia in the autumn of 1833 met the Emperor of Austria and the Crown Prince of Prussia at München-Grätz to discuss the condition of Germany and Poland. The sovereigns decided that a ministerial conference should be held at Vienna, and on January 13, 1834, Prince Metternich opened the first sitting. The resolutions then agreed upon were, that the head of each State should hold firmly to his sovereign rights, and that he should in no way make concession to the demands of his Assemblies ; that the Diet should, in case of necessity, send troops to help the sovereign, and that a Federal Court of Appeal should be established for settling differences between the sovereign and his people. This latter resolution was never carried into effect. The Carlsbad decrees were again formally renewed. Russia, while she was apparently acting in harmony with the two great German Powers, secretly circulated through the Middle States a note in which she warned them against the pretensions of Imperial Austria and of Constitutional Prussia, and urged them to look upon her as their natural and only true friend. The camp which she formed at Kalisch two years later, and at which her troops,

CHAP.  
I.  
1820-48.

Conferences  
at Vienna.

Camp at  
Kalisch.

CHAP.  
1.  
1820-48.  
Death of  
Emperor  
Francis.

mingled with those of Austria and Prussia, were to give to the world an example of brotherly love, failed completely. It was in March of this year (1835) that the Emperor Francis died, the last Hapsburg who had borne the German Crown.

## CHAPTER II.

Meetings in Baden—The 'Vor Parlament'—Dissolution of the Diet—Revolts in Baden—Plans for a New Constitution—Election of Emperor—Refusal of King of Prussia to accept Imperial Crown—Appointment of Particularist Ministry—Resignation of Members of Parliament—Three King's Alliance—Meeting of the Old Diet—Results of the Revolution of 1848.

THE July revolution of 1830 passed by, as has been said, almost without notice; but in 1848 the long repressed bitterness and discontent found expression. The first symptoms of the coming revolution in Germany were visible in Baden, where meetings were held with a view of altering the present Constitution. The demands which were then made, and which were afterwards accepted as the Liberal programme throughout Germany, were as follows: A German parliament, elected by and from among the whole male population; trial by jury; freedom of the press; arming of the people; equality of all religions; abolition of feudal burdens. The Diet at the first rumbling of the storm lost its head completely, and made concession after concession. The smaller States immediately followed its example, and granted all these demands, with the exception of that for a German parliament, which was beyond their powers. The leaders of the revolutionary movement, Itystein, Gagern, Struve, and others, met and

CHAP.  
II.  
1848.

Meetings  
in Baden.

Meeting  
and pro-  
gramme of  
revolu-  
tionary  
leaders.

CHAP.  
II.  
1848.  
Diet's con-  
cessions.

formed a commission to prepare the way for a national representation. A preliminary parliament (Vor Parlament) was to be called together, formed of members elected from the Assemblies of the different States, to debate upon the best mode of obtaining a National Diet. The Diet endeavoured to anticipate the demands of the people by declaring every German State to be at liberty to abolish the censure ; by calling upon the several Governments to depute delegates for a revision of the Constitution on a more national basis ; and finally by decreeing elections for a German parliament. All these resolutions merely showed the weakness of the Diet, as the leaders of the new movement steadily pursued their course, and showed themselves perfectly indifferent to the proceedings of that body.

Concessions  
of Austria  
and  
Prussia.

The disturbances which took place simultaneously at Berlin and Vienna forced the Governments of both countries to make the desired concessions, and they attempted to conciliate the popular mind by taking the chief reformers into their ministries. While, however, the Government of Austria limited their concessions to matters of internal government, the King of Prussia went a step farther, and on March 18, after abolishing the censure and promising to call the Landtag together, he declared himself ready to replace the Confederation by a Federal State. This statement created considerable dissatisfaction and distrust at Vienna and other capitals ; it appeared as if Prussia were taking advantage of

the disturbed state of Germany to further her own projects and ambition.

CHAP.  
II.

1848.

Meeting of  
the 'Vor  
Parla-  
ment.'

The 'Vor Parlament' met in Frankfort on March 31, in the Church of St. Paul. The several States were most unequally represented. Prussia, for example, sent one hundred and forty-one deputies, Austria two, and Hesse Darmstadt eighty-four. The majority were inclined to constitutional monarchical principles, but there was a large and active minority who desired to see a constitution framed on the model of that of the United States of America, introduced into Germany. It was determined that the Constitution of Germany should consist in a chief of the Empire, assisted by a diet composed of a senate and a representative assembly. All the demands made at Baden were ratified, and it was decided that the future Constitution of the Empire should be settled by the National Assembly about to be elected, without reference to the several Governments. This was placing all power in the hands of the democratic party. The advanced party, led by Hecker and Struve, attempted to have the German Republic declared, and then the permanency of the 'Vor Parlament' voted, but in vain. It was now that the extreme party separated itself entirely from Gagern and the moderate reformers, and proceeded to acts of overt rebellion, which took some time to suppress. No greater mistake could be made than to suppose that the majority, either in the 'Vor Parlament,' or in the Assembly which it called into life,

Plan for  
constitu-  
tional  
reform.

Separation  
of extreme  
party from  
moderate  
reformers.

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II.

1848.

Meeting of  
delegates  
summoned  
by Diet.Dissolution  
of Diet.Elections  
for a  
German  
Parliament.Meeting of  
German  
Parlia-  
ment.Archduke  
John ap-

were in any way imbued with republican principles. A committee of fifty was appointed to watch over the affairs of the Confederation till the meeting of the new Parliament, and the 'Vor Parlament' then dissolved itself.

The delegates from each State, to the number of seventeen, which the Diet had summoned to prepare a new Constitution, had in the meanwhile met. But the Diet had practically ceased to live. It lingered on for a few months longer, but on the acceptance of the office of Administrator of Germany by the Archduke John, it resigned its phantom power into his hands, and died unregretted.

The elections for the new Parliament were now proceeded with, and were aided by the several Governments. The terrible warning these latter had received from the great events in Vienna, Berlin, and elsewhere had convinced them that the only means of salvation was concession. The electoral machinery was simple. One deputy was to be elected to every 50,000 souls by direct votes.

On May 18, the new Parliament, consisting of three hundred and thirty members, met at Frankfort in the Paul's Kirche, and Herr v. Gagern was elected President. The democrats formed but a small party in this Parliament. Till the Parliament had decided on the prince whom they would select for the head of the empire, it was necessary to appoint a provisional holder of the office, and after an eight days' debate the post was offered to Archduke John

of Austria, who accepted it with the title of Administrator of the Empire (Reichsverweser). The Administrator possessed no real power, and was a mere puppet: in fact, in some States, such as Limburg and the Duchies, he was completely ignored.

The new Parliament maintained the resolution of the 'Vor Parlament' that it alone was to decide on the Constitution. The discussions on the fundamental rights of Germans then commenced, and it soon became evident that little practical good was to be expected from this new assembly. Many of the members were professors, and being delighted at having an opportunity to employ their eloquence on abstract questions, they wasted many a valuable hour in hair-splitting, and word-catching. Over the first two words 'every German,' in the fundamental law, there were discussions which lasted several hours.

In the meanwhile some active fighting had taken place in the country, principally in Baden and its neighbourhood. The revolution which was fanned by Struri and others, and which made for the moment some head in the country, was soon crushed by the soldiery. The efforts of the revolutionary party were too isolated, their plans too hastily conceived and too weakly carried out, the sympathy they received too half-hearted, ever to have allowed their chance of success to be very great; while they afforded an excuse for the reactionary measures which the Governments, when recovered from their terror, afterwards adopted. We shall see that the

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1848.

pointed Ad-  
ministrator  
of the  
empire.

Discussions  
in Parlia-  
ment.

Revolts in  
Baden.

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1848.

Demands  
of the  
Roman  
Catholic  
Clergy.

Governments rushed wildly from one extreme to the other, at first yielding in a most reckless and haphazard manner everything the mob demanded, and then retracting their promises, and taking back all, and even more than they had given.

The Church itself determined not to be left alone in the general cry for new rights and privileges. The German Roman Catholic bishops held a meeting at Wurzburg in October, under the presidency of Cardinal Schwarzenberg, in order to obtain full freedom for their Church ; freedom of possession and disposition of the Church property ; conduct of the education of the priests, and of the people ; and free intercourse with Rome. In the concordats which Austria and Wurtemberg concluded with the Papal See, most of these demands were granted ; and in Prussia the clergy were placed on a better footing than before. Menzel remarks that the revival of religion was one of the most important results of the German Revolution, and is surprised that the Catholics played no part notwithstanding the favourable opportunity offered to them in the revolutionary time. Many Catholic societies were formed at this period. Similar meetings to that of the Catholic bishops were held by the Evangelicals at Wittenberg, and by the Lutherans at Leipzig.

Resolutions  
of Parlia-  
ment.

The discussions on the ' fundamental rights of the German people ' were finished on December 21. The most important of these rights, as settled by the Parliament, were :—Equality of all Germans before

the law ; protection of personal liberty ; universal military service ; right of meeting ; trial by jury ; equality of all religions ; freedom of the press ; abolition of feudal burdens, of *fidei commissa*, and of capital punishment. The larger kingdoms and States in Germany declined to accept the conclusion to which the Parliament had arrived, till the Constitution had been settled on a firm basis. And how inopportune was the publication of these Rights ? The two chief capitals in Germany in open revolt ; the western States harassed and traversed by revolutionary bands ; the Emperor of Austria a fugitive from his capital ; part of the dislocated Assembly of Prussia at Brandenburg, the other part at Berlin, each declaring the other illegal and traitorous ; the protestations, orders, and prayers of the Frankfort Parliament totally disregarded. In all this confusion the Assembly which was to preserve order and peace in Germany, could find no better means of fulfilling their mission than by giving forth to the world a long list of abstract rights which Germans should possess.

The debates respecting the Constitution having commenced in October, lasted all through the winter. The form of the new Constitution puzzled the Parliament at Frankfort. The idea of a Federative State was difficult of realisation. Not only were the relations of the several States to each other difficult to define accurately, and not only was the opposition which the Middle States would offer to

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1848.

Plans for a  
new Con-  
stitution.  
1849.

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the plan hard to surmount, but the position of the two great Powers, Austria and Prussia, taxed the ingenuity and brains of the framers and promoters of the new scheme. An article which appeared in the 'North British Review' in 1869, puts the difficulty very clearly:—'If the German provinces of Austria were to enter the Bundes Staat, it was first necessary that they should be dissevered from their political connection with the rest of the Austrian Empire, and the establishment for the future of a merely personal union between the German and non-German dominions of the house of Hapsburg-Lothringen. If this condition could not be fulfilled, and the work of constituting a centralised confederacy had to be proceeded with, then Austria must be excluded from the new State. If not, then a return to an international confederacy of the old kind was the only alternative left.'

The Constitution as settled by the Frankfort Parliament was as follows:—

The government was to be exercised by a chief of the empire, and a Reichstag, with an upper and lower house. Half of the members of the upper house were to be named by the Government, and the other by the representatives of the several States. The lower house was to be elected by direct votes, one deputy to every 70,000 souls. The central power was to be the international representative of Germany: the several States were not to receive or send envoys or consuls. The army,

navy, railways, post, coinage, &c., were all to be under the immediate superintendence of the central power. The central power was to have a suspensive veto; but when a resolution had passed the Reichstag three times, it was to become law without the sanction of the central power. But who was to be head of the empire? There was the difficulty. The struggle lay between Austria and Prussia. Those who remembered the great deeds of the latter in 1813 in behalf of Germany, her great military power, her entire Germanity (if a word may be coined), men like Gagern and Bunsen, were strongly in favour of the elimination of Austria and the establishment of Prussia in the place to which she was entitled. This party received the name of Small Germans,—in contradistinction to the Austrian party, who termed themselves Great Germans. The former party forced through the Parliament the resolutions that the head of the empire must be a reigning Prince, that he should take the title of Emperor of the Germans; and on March 28 by 290 to 248 votes Frederick William IV. was elected Emperor, and the Imperial Crown declared hereditary in the House of Hohenzollern.

Austria tried to counteract the effect of these resolutions by proposing that a directory of seven sovereigns under Austrian presidency should be the head of the central Government—that the Imperial crown, in fact, should be put in commission. But in order to obtain this majority Gagern and his party

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1849.

Question of  
Emperor.Small German party,  
and Great German party.Election of  
King of  
Prussia as  
Emperor.

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II.  
1849.

Refusal of  
the King to  
accept  
Imperial  
crown.

had formed a compact with the Left. They had promised the Left a purely democratic electoral law, and to vote against the absolute veto of the future Emperor. This compact was signed on March 26, 1849, by 114 members of the Gagern party. The choice, then, of the King of Prussia as Emperor could not have been made without the Left, and this aid made its acceptance impossible at Berlin. The result of the vote is well known. The King refused the proffered honour. The reasons for this refusal have often been discussed; the majority being of opinion that the refusal resulted chiefly from the time and manner of making the offer of the Imperial dignity. Europe was barely recovering from the shock of last year; it was therefore imprudent to wound and insult a powerful State, the traditional bulwark of the old order of things. To this state of affairs Governments were now desirous of returning as far as possible; but to accomplish this by an act dictated by a revolutionary assembly would call forth opposition from men who supposed that a Head would thus be given to a movement barely suppressed. A crown too, the property and in the disposal of the reigning princes of Germany, could not be transferred by a narrow majority in a representative assembly. Frederick William IV. could not, and never would consent to become a democratic emperor.

The refusal embittered the feeling amongst the people, who were far more national than their rulers,

and who thereby saw the chance of a united Germany slipping from their hands. The want of cohesion, combination, and organisation destroyed the possibility of the people gaining this end by themselves. The refusal, again, was quite unexpected by the Frankfort Parliament. Austria withdrew all her deputies from the Assembly. The Parliament determined to call upon all Germans to subscribe to the Constitution, the question of the head of the Empire remaining an open one, and to proceed with the elections, hoping to summon the new Reichstag in the early days of August. Nearly all the representative assemblies of the several States had accepted the Imperial Constitution. William of Wurtemberg was, however, the only king who had done so. Hanover and Saxony dissolved their assemblies sooner than accept the Constitution. This naturally gave rise to discontent and murmuring, in some places breaking out in open hostilities amongst the people, who considered that the princes were attempting to rob them of the little freedom the Constitution offered them. The republicans had not much hold on the country; in some instances they openly declared their aim to be the establishment of a republic, but in most cases their declared object was the introduction of the Imperial Constitution. If they had been successful, their demands would probably not have stopped there, but it would be too much to say that the wish of the people was for a republic.

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II.

1849.

With-  
drawal of  
Austrian  
deputies.Character  
of the re-  
ception of  
the Con-  
stitution by  
German  
States.

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II.

1849.

Resigna-  
tion of  
Gagern.  
Appoint-  
ment of  
Particular-  
ist  
Ministry.

Gagern resigned his office on May 9, finding he could not hinder the Parliament from passing revolutionary votes, and the Archduke John named a new ministry (Detmold Grävell), who were opposed to the unity of Germany and to the policy of Prussia. There is some doubt whether the Archduke was really imbued with patriotic and liberal views. He may have been alarmed by the excessive demands of the Liberals and hurt as an Austrian Prince by the position of Prussia. He may have therefore gone counter to his past acts and intentions, and named this Particularist Ministry. It shows little political insight if he imagined that such a ministry was practicable at that time.

Resigna-  
tion of  
members of  
Parlia-  
ment.

The result of his move was that more than 150 members of the National Assembly resigned their seats or were recalled by their Governments, including Gagern and his party. The remnant of the assembly, composed chiefly of members of the extreme Left, transported itself to Stuttgart, declared the Archduke deposed, named a regency of five members, and demanded men and money from Wurtemberg and other countries in order to maintain peace and order. Their demands were refused, and the Wurtemberg troops were ordered to disperse the members if they continued to hold their sittings. This order was carried into effect on June 18, and the Frankfort Parliament ceased to exist.

Forcible  
dissolution  
of Frank-  
fort Parlia-  
ment.Prussia's  
attempts at  
Constitu-

Prussia now attempted to commence her work of reorganisation in Germany, but she failed. A

conference of princes was held at Berlin in May, but it lasted only a few days. Austria and Bavaria soon withdrew from it; the former when she discovered that the discussions tended towards her exclusion from the Germanic Confederation, and the latter because she saw that the object was the establishment of a Federative State (Bundes Staat) under Prussia. Hanover and Saxony, the other two States who attended the conferences, remained, however, firm to Prussia, and concluded with her the Three Kings' Alliance. This alliance, to which any member of the Confederation might attach himself, was chiefly to occupy itself by drawing up a Constitution for Germany. By this Constitution, drawn on the same lines as that of Frankfort, a court of appeal was to be instituted at Erfurt to which every member of the Confederation was to submit himself. The term Empire (Reich) was to be given to this smaller Confederation (Austria being naturally excluded), and the head of the Central Power, though he was not to take the title of Emperor, but of head of the Empire (Reichsvorstand) was to be a Hohenzollern. He was to govern with the help of a college of princes, consisting of six members; viz. Prussia; Bavaria; Saxony, with the Thuringian States and Anhalt; Hanover, with the North German States; Wurtemberg, with Baden, Hohenzollern, and Lichtenstein; the three Hesses, with Luxemburg, Limburg, Nassau, Waldeck, Lippe, and Frankfort-on-the-Main. The Reichstag was to consist of two cham-

CHAP.  
II.

1849.

tional  
reforms.Conference  
of princes  
at Berlin.Three  
King's  
Alliance.

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1849.

bers. Bavaria and Austria looked askance at this Constitution ; and the latter openly declared that she would never agree to a German Parliament, and that her only desire was the re-establishment of the old Diet under her presidency.

Refusal of  
Archduke  
John to  
resign.

The Archduke John still held the office of Administrator, although the Assembly which had elected him was dissolved. He declined to resign his appointment until requested to do so by all the German Governments, and in this he was supported by Austria, who saw in him the only link which at present connected her with Germany. Prussia therefore withdrew her minister from Frankfort, and all relations between her and the central power consequently ceased. She had obtained the adhesion of most of the States to the Union of Three Kings ; but Austria succeeded in making Bavaria and Wurtemberg cool with regard to this union by frightening them with the consequences of the German Parliament which was to meet at Erfurt next year, and for which Prussia begged her colleagues to prescribe elections. Gagern called together a Rump Parliament at Gotha, but it immediately dissolved itself after it had formally approved the policy of Prussia. This Power, however, saw the impossibility of realising the ideas which had inspired the union, in the face of the opposition of Austria, Bavaria, and Wurtemberg, and with the support of very lukewarm adherents. She therefore began to enter into negotiations with Austria, and on September 30 a treaty,

With-  
drawal of  
Prussian  
Minister  
from  
Frankfort

‘Interim  
treaty.

called the 'Interim,' was signed at Vienna. In this treaty the two Powers agreed that till May 1, 1850, the functions of the central power should be exercised by them conjointly, assisted by a Federal Commission (Bundes Commission). This Commission met at Frankfort in the middle of December, and the Archduke resigned his power into their hands.

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II.

1849.

Resigna-  
tion of  
Archduke  
John.Meeting of  
new Parlia-  
ment.

Prussia now made endeavours to obtain the summoning together of the new Parliament, and notwithstanding the opposition of Austria and the Middle States it met at Erfurt on March 20, 1850. But though Austria had been unable to prevent its meeting, it procured its dissolution; and on April 29 it was suddenly prorogued, never to meet again. The time for the expiration of the 'Interim' Treaty was now approaching, and at the end of April Prince Schwarzenberg, the Austrian Prime Minister, made a bold stroke, and summoned the old Plenum to meet at Frankfort. The Middle States and seven other Governments<sup>1</sup> responded to the appeal, but Prussia and her allies protested. The Plenum met on May 10, and on September 2, Austria opened the smaller Council, and consequently re-established the old Diet. Owing to the state of tension in the relations between Prussia and the resuscitated Diet, it was evident that a severance must soon take place which would result either in submission or war. The eternally recurring differences between the

Dissolu-  
tion of Parlia-  
ment.Austria  
summons  
old Diet to  
meet at  
Frankfort.

<sup>1</sup> Electoral Hesse took a middle course, and sent representatives to Frankfort and to Berlin.

CHAP.  
II.

1850.

Difficulties  
in Hesse.Bronzell  
skirmish.Treaty of  
Olmutz.Dresden  
con-  
ferences.Re-estab-  
lishment of  
old Diet.

Elector of Hesse and his subjects settled the question. The Assembly of Hesse refused to pay the taxes which had been imposed by the Elector's minister, Hasenpflug, without their sanction. The Elector appealed to the Diet, who promised to aid him. Hesse, however, still formed part of the Three Kings' Union, and Prussia had either to oppose the intervention of the Diet or submit. She had already put her troops in motion, when Russia declared that she would view the opposition of Prussia to the decrees of the Diet as a *casus belli*. Russia had secretly worked for the re-establishment of the Diet, and was determined to support it now that it was recalled to life. Prussia hesitated; there was a slight skirmish at Bronzell between her troops and the Bavarians; she lost heart, recalled her troops, and entered into negotiations at Olmutz, in which she promised to dissolve the Union and recognise the restored Diet. Conferences were then held at Dresden respecting what form of constitution should be accepted. The proposals were many, but they were all rejected. Russia, through the Middle States, worked hard for the return to the Final Act of Vienna, and she was successful. Weary with negotiation and anxious for rest, Prussia, on March 27, proposed the re-establishment of the Diet. The other States accepted the proposal, and on May 30, 1851, the German Confederation was once more in existence.

But although a return was made to the old order of things, the past two years had not been

without fruit. The equality of all before the law, the increased freedom of the press, trial by jury, universal suffrage, vote by ballot were substantial gains which the people would never allow to be wrung from them again. They had also obtained a less tangible but far greater benefit, one which no human hand could wrest from them, and which no constitution, no code of laws can of themselves give —the consciousness of a political existence. In Germany the Revolution of 1848, commenced from political motives, was carried on for political aims, but its greatest results were chiefly shown in the social life of the country.

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II.  
1851.

## CHAPTER III.

Results of the Revolution of 1848—Three Great Questions—The Slesvig-Holstein Question—Reform of the Constitution—Congress of Sovereigns at Frankfort.

THE Customs Union of Prussia made progress, and in September of this year she consolidated this union by amalgamating it with that of Central Germany, of which Hanover was the head. Austria having in vain endeavoured to form another Customs Union, and knowing the objection Prussia would make to her entering her own, concluded a commercial treaty for twenty years with that Power in February 1853.

CHAP.  
III.  
1851.  
Extension  
of Customs  
Union.

Results of  
1848 Revo-  
lution.

The gulf between Austria and Prussia had been widened by the events in, and subsequent to, 1848 ; and this rivalry between the two great Powers hindered the Diet from exercising that influence to which its position entitled it. The Middle States were, however, more closely united ; but as they oscillated to and fro between Austria and Prussia, according to the promptings of their own interests, and never pursued a truly national line of policy, it is at their door that the delay in achieving the great work of national unity must be laid. If

their Governments had possessed loftier and nobler aims ; if a statesman had arisen amongst them of some breadth of mind and depth of insight, a statesman who could have seen clearly that Austria was a weak reed to lean on, and that the real strength lay in Prussia, many of the events which followed might have been avoided. The re-establishment of the Diet was accepted as a last alternative, as the only possible solution of difficulties arising from conflicting views and interests ; a solution admittedly of a temporary character. That it was satisfactory to Germany no one would venture to declare. It was hoped, however, that the Diet would occupy itself with endeavours to meet these conflicting interests, and with the preparation of a constitution likely to satisfy the desires of Germany. The past failures had in no way discouraged men ; they had, on the contrary, shown where the real difficulties lay. But it was as clear as noonday that Austria and Prussia could not work side by side, and that the time must shortly come when one of these Powers must give way to the other.

I must pass over several years, and hurry on to the great events which next occurred in Germany.

From the meeting of the Diet in 1851, to the outbreak of the Italian War in 1859, Germany busied herself with her internal affairs, and in recovering herself from the shock of 1848. The activity of the Diet had no great scope ; its intervention was invoked in the differences between the

CHAP.  
III.  
1851.

CHAP.  
III.  
1852-59. Grand Duke of Mecklenburg and his Chambers, as also in those between the King of Hanover and his Assemblies ; but in neither case was the intervention of much avail.

Wurzburg  
coalition.

The formation of a coalition of the Middle States which received the name of the Wurzburg Coalition, in which Bavaria and Saxony took the most active part, should be mentioned. The object of this coalition was to secure to the Middle States a more independent position, and so form a bulwark against the pretensions of the two great Powers on the one hand, and the demands of the people on the other. The interests were too diverse, and the jealousy too great, however, to allow of this coalition exercising the influence which its promoters anticipated.

National  
Union.

The defeat of Austria in 1859, the want of cohesion among the German States, and the success of the French arms caused alarm in many minds in Germany. This alarm produced the formation of a society whose aim was to render Germany united and free, and consequently strong and independent with regard to foreign nations. The chief promoters of it desired to thoroughly reform the Constitution of Germany, and to restore, as far as possible, that settled by the Frankfort Parliament, of which many of them had been members. The first meeting was held at Eisenach in July 1859, and it was resolved that the society should receive the title of the National Union. It was also resolved that Prussia

should take the lead in the management and reform of German affairs, as Austria was composed of too many different elements to be called thoroughly German. The permanent seat of the union was to have been Frankfort-on-the-Main, but the Senate of this town feared to have the Diet and its declared opponent holding sittings in such proximity ; the place of meeting was therefore removed to Coburg.<sup>1</sup>

CHAP.  
III.

1861.

There were three questions agitating political minds in Germany : 1. The differences between the Elector of Hesse and his Chambers. 2. The position of the Confederation towards Denmark with regard to the Duchies of Slesvig and Holstein. 3. The Reform of the German Constitution. The first of these questions would have remained a private one between the Elector and his Chambers had not the latter appealed to the Diet. The Chambers demanded the restoration of the Constitution of 1831 and the repeal of that of 1851 ; the Prince constantly refused, and although the Diet took the part of the Chambers, years passed away and no satisfaction was given. Prussia at last took the matter up warmly, and was joined later by Austria. The former threatening the Elector with force, he promised to meet the demands of his subjects—a promise which, however, he found means of evading, when greater events occupied the attention of Germany.

Three great  
political  
questions.Difference  
between  
Elector of  
Hesse and  
his subjects.

<sup>1</sup> In 1862 the great Germans formed a German Reform Union in opposition to the National Union and its programme.

CHAP.  
III.

1863.

Slesvig-  
Holstein  
question.

To enable my readers to gain some idea of the second question, I must carry them back to the year 1834, and then give a short sketch of the events which had happened in the Duchies since that year. King Frederick VI. of Denmark had in 1834 established separate Provincial Assemblies for Iceland, Jutland, Slesvig and Holstein; the latter duchy, as is well known, forming part of the German Confederation. Frederick died in 1839. In 1846 his successor Christian VIII. published a letter by which he extended the Danish law of the succession of the cognates to the Duchies, and thereby excluded the agnates, who were then represented by Duke Christian of Augustenburg. The Assemblies of the Duchies protested, and that of Holstein appealed to the Diet, who decided (September 17, 1846) that the rights of the Duchies as well as the law of the agnatic succession must be preserved. The Danish Government gave an evasive answer, saying that they did not intend to change the *status quo*; but the letter was not withdrawn, and the matter remained in doubt until 1848, when Christian VIII. died, and was succeeded by Frederick VII.

On January 28, 1848, Frederick VII. granted a Constitution for the whole of Denmark (including the Duchies), by which he hoped to satisfy Slesvig and Holstein by the liberal concessions he made in it. But the Duchies declined to accept this Constitution, and their two Assemblies uniting themselves, declared that Slesvig as well as Holstein should

enter the German Confederation as one State. As Menzel justly remarks, this was an act of open rebellion against Denmark, since there were no just grounds for Slesvig to demand incorporation. The Duchies established a provisional Government, with the Duke of Augustenburg at its head, their proceedings being highly approved of by Prussia and the Diet, the former promising to aid the Duke of Augustenburg 'in maintaining his undoubted right of succession.' The representative of Slesvig-Holstein was allowed to take his seat in the expiring Diet at Frankfort. Hostilities broke out by the Danes defeating the Ducal troops, but the tide was soon turned by the advance of the Prussian troops under Wrangel and of the Hanoverians under Halkett. The war was brought to a conclusion by an armistice signed at Malmoe, August 20, 1848. By this instrument Denmark agreed to a common Government for Slesvig and Holstein, half of whose members should be named by Denmark and half by the German Confederation. Denmark demanded that all acts of the Provisional Government should be declared invalid, and the troops of Slesvig and Holstein should be separated, each remaining in their respective countries. These were agreed to, as also the proposal that neither party was to be bound by the conditions of the armistice in the future treaty of peace. This armistice was at first rejected by the Frankfort Parliament, but as the movers of the rejection were unable to form a ministry, and as a

CHAP.  
III.  
1863.

Malmoe  
armistice.

CHAP.  
III.

1863.

Fresh out-  
break of  
hostilities.London  
protocol of  
1850.

prosecution of the war appeared to be impossible without the assistance of Prussia the armistice was eventually accepted. In the spring of 1850 Holstein declared war of its own accord against Denmark, owing to the exactions which were practised on the inhabitants of Slesvig by the Danes. And, although the Ducal troops were defeated at Idstedt, the capture of Düppel by the Federal troops led to the signature of another armistice, followed by a protocol signed in London, July 2, 1850, by England, Russia, France, Prussia, Austria, Sweden, and Denmark, in which the integrity of the possessions actually united under the Crown of Denmark was recognised, as also the wisdom of the King of Denmark in desiring to regulate the succession. This protocol was ratified by the resuscitated Diet on September 30.

Treaty of  
1852.

The question of the succession was first actively mooted by Russia, who declared in favour of Prince Christian of Glücksburg. Prince Christian's mother was sister of the cognate heir, Prince Frederick of Hesse. A conference was held in London, and a treaty was concluded May 8, 1852, in which the necessity of the preservation of the unity of Denmark was again affirmed, and the succession to the throne secured to Prince Christian of Glücksburg. Denmark was further to prescribe a common Constitution for the whole of the kingdom, due regard being had to the privileges and rights of the Duchies. This treaty was not submitted to the Diet, Austria

and Prussia denying the competence of that body to deal with treaties of succession. This is an important fact, and should be kept in view when we come to the events of 1863 and 1864. The Duke of Augustenburg had his claims satisfied by a sum of money, and he promised for himself and heirs not to disturb the peace of Denmark. By introducing the cognate succession into the Duchies no fewer than eleven German Princes who had a nearer agnate right of succession were put on one side; not only all the Augustenburgs, but the elder branches of the Glücksburg family. It was even the youngest of the younger branch of Glücksburg that was chosen, and in case his line died out the succession would fall to the Gottorp line in the Russian Imperial family. Could this have influenced in any way the selection which Russia had proposed?

The promise which Denmark made to grant a common Constitution acceptable to the Duchies was not fulfilled. After much pressure from the Treaty Powers, the King of Denmark in 1855 gave a Constitution, but it was by no means considered satisfactory. The patience of the German Powers was further becoming severely tested by the system of oppression, petty as it was, which the Danish officials exercised towards the German inhabitants of Slesvig, in attempting to impose on them an education, a religious service, and a language totally distinct from their own. An execution had been voted by the Diet, and it was only through the strenuous

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Danish  
Constitu-  
tion of  
1855.

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1863.

Constitu-  
tion of No-  
vember 18.Succession  
of Prince  
Christian  
to the  
throne.

exertions of friendly Powers that this was averted ; and a promise obtained from Denmark that she and the Duchies should name an equal number of delegates to discuss the measures for adopting a common Constitution agreeable to all parties ; and that, until this Constitution was established, no laws of a general character should be passed without the assent of the Duchies. This proviso, dictated by the Diet, Denmark did not fulfil, as she passed the Budgets for 1860 and 1861 for the whole monarchy without consulting the Assemblies in the Duchies. She then attempted (by a Patent of March 30, 1863), to incorporate Slesvig entirely, and to separate Holstein from her by granting to the latter Duchy a separate administration and army. The Diet called upon her to withdraw this Patent, and to grant a common Constitution, threatening her with an execution if she refused. The Patent was not immediately withdrawn, but a Constitution was drawn up, well known as the Constitution of November 18, which was not submitted to the States of the Duchies, which did not meet the necessities of the case, and which only awaited the signature of the King, then lying on his death bed. He died on November 15, 1863, and was succeeded by Prince Christian with the title of Christian IX. Great pressure from the friendly Powers was now put on this sovereign to prevent his signing a Constitution, which would not be accepted by the Duchies, and which would inevitably entail active interference from the Diet. But the

Eiderdānish ministry pressed their master not to submit ; considerable distrust was entertained in Denmark of King Christian, owing to his supposed German proclivities, and he had to choose between signing the Constitution and losing his crown. He preferred the former step.

The Duke Frederick of Augustenburg, son of the Duke who had received compensation, not considering himself bound by his father's promises, declared himself rightful heir to the Duchies, and obtained the recognition of several of the smaller German States. Austria and Prussia, however, maintained the Treaty of London, and brought the Diet to declare an execution in Holstein (December 7, 1863), to be entrusted to themselves with Hanover and Saxony. But the two great Powers would not allow the Diet to interfere in the matter of Slesvig, as it was not bound by the Treaty of London ; they on the other hand were so bound, and therefore intended to proceed independently of the Diet. The middle and smaller States entered protests against this declaration, and the National Union, which had been very active in procuring aid and sympathy for the Duchies, was much displeased at the question losing its German character, and becoming one affecting Austria and Prussia alone. The protests of the Middle States were naturally disregarded, and merely showed the weakness and helplessness of Germany when the two great German Powers were united.

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1863.

Claims of  
Duke of  
Augusten-  
burg.

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Declara-  
tion of war.Treaty of  
Vienna.

Denmark still refused to withdraw the Constitution of November 18, and war was then formally declared by Austria and Prussia. An attempt to stop the war was made by the London Conferences, which commenced April 25, 1864, at which, it may be remarked, a plenipotentiary from the Diet was present; but this attempt failed, owing to the refusal of Denmark to accept the only solution which the two great German Powers were willing to offer, namely a personal union only with the Duchies. These latter, on the other hand, demanded to be entirely separated from Denmark, and to be constituted into a separate State, with the Duke of Augustenburg as their ruler. The rapid advance of the allied armies, however, compelled the Danes very shortly after the Conference to sue for peace, and a treaty was concluded at Vienna, October 30, 1864, by which Denmark ceded Slesvig, Holstein, and Lauenberg to the allies, but preserved the peninsula of Stenderup for the protection of Funen. This Treaty was signed and ratified without any reference to the Diet, although Holstein and Lauenberg formed part of the German Confederation. It was, no doubt, the policy of Prussia to ignore the Diet and to expose its feebleness to the world. She had fought hard against the re-establishment of this body, and would have been only too happy to see it once more overthrown. But it was surely short-sighted policy on the part of Austria to allow her own off-

spring, the only link by which she was bound to the Confederation, to be put on one side.

Let us now consider the third question, the Reform of the Constitution, the most important of all questions and the most difficult of solution. Freiherr von Beust, the Saxon Minister for Foreign Affairs, was the first in the field with a plan of reform entirely in the interests of the Middle States. The following is a sketch of his plan. The Government was to consist of three bodies — a Federal Assembly (Bundes-Versammlung), a Representative Assembly, and a Federal Court of Justice (Bundesgericht). The Federal Assembly, composed of representatives from the Federal States, was to meet twice a year; once in South Germany, and once in North Germany. In the former case, Austria would have the presidency, in the latter, Prussia. The Representative Assembly was to have no regular sessions; the summoning, prorogation, and dissolution of it were to be in the hands of the Federal Assembly, and it was only to discuss those questions which the latter was pleased to lay before it. Austria and Prussia were to send thirty members each to it, and the other States were to have sixty-eight representatives between them. This alone was sufficient to make Prussia reject the proposal, as it would give too great a weight to the Middle States. During the recess of the Federal Assembly an executive body was to have the conduct and management of affairs; this executive was to consist of Austria,

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Plans for  
Constitu-  
tional  
reforms.

Herr v.  
Beust's pro-  
posal.

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III.  
1861-64. Prussia, and a third State. The Federal Court was to decide on differences between members of the Confederation. This plan was against the wishes of both Austria and Prussia. The former declined to resign the presidency of the Diet unless this body took her non-German Provinces under its protection ; and Prussia saw that by this project she would not attain the end to which she had been so long striving —the formation of a Federative State. In the note which Count Bernstorff, the Prussian minister for foreign affairs, sent (Dec. 20, 1861) in answer to the Beust proposal this objection was put forward, and produced counter notes (Feb. 2, 1862) from Austria and the Middle States, who declared that they would never entertain the idea of a Federative State.

Austria's great aim was to estrange the Middle States from Prussia, and she thought she saw her way to this in an event which happened at this time. Prussia had concluded (March 12, 1862), a commercial treaty with France, and had requested the adhesion of the Middle States to it with the alternative of leaving the Customs Union. The Middle States met this with a counter move, for, knowing that Austria was demanding admission into the Customs Union, they made their future connection with the Union depend on the demand of Austria being granted ; and till this was effected they would not accept the French treaty. Prussia, however, held firm, and the other States had not the courage to fulfil their threats. Austria took advantage of

their soreness of feeling to propose, at first secretly, to the Middle States, a congress of Sovereigns to discuss a plan of reform ; and it was only a few days before the proposed meeting at Frankfort that the invitation was sent to Prussia. The congress of Sovereigns met at Frankfort August 16, 1863 ; but one seat, and that the most important one, was vacant. The King of Prussia had declined an invitation on the ground that he could not meet his colleagues to discuss so important a question as the plan of reform, without having had it first submitted to him for his consideration. The project when brought to light proved to be, in its attempts to meet all the conflicting views, so complicated in its provisions and so unsatisfactory to those who aimed at national unity, that, even without Prussia's opposition and the difficulties which arose in the North, it could never have been accepted. The most important provisions were the following. The Government was to be distributed amongst five bodies : 1. A Directory ; 2. A Federal Council ; 3. An Assembly of Delegates ; 4. An Assembly of Sovereigns ; 5. A Federal Court of Justice.

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1861-64.

Meeting of  
Sovereigns  
at Frank-  
fort.

The Directory, in which all power was in reality vested, was to consist of five members—Austria, Prussia, Bavaria, and two more to be elected by the States whose contingents composed the 8th, 9th, and 10th Army Corps.<sup>1</sup> The Federal Council was to be

<sup>1</sup> These were nearly all the other States, including the free towns, with the exception of Anhalt, Lichtenstein, Hesse Homburg, and some other duodecimal principalities.

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similar to the smaller Council of the Diet, except that Austria and Prussia were to have three votes each, so that the number was increased from seventeen to twenty-one. The Assembly of Delegates was to consist of 300 members, of which 150 were returned by the Middle States, and was to meet every third year, in the month of May, at Frankfort. The Federal Court was to be composed of fourteen members, to be increased to twenty-six when it acted as a Court of Arbitration between the Sovereign of a Federal State and his Assemblies. The Assembly of Delegates entirely depended on the Directory. The Assembly of Sovereigns was to play merely an ornamental part, while the Council was merely the Directory *in pleno*.

Prussia declined to accept this project of reform, and the Middle States feared to push matters to extremities by ignoring the refusal. The results, therefore, of the Congress were *nil*; and one more stillborn Constitution was added to the many which had met with the same fate.

There was also the plan of a Triad Government put forward by Herr von der Pfördten, the Bavarian Minister, which proposed that a third State should be raised to a position to counterbalance Austria and Prussia. Mr. Grant Duff in his 'Studies on European Politics,' in an article on the Germanic Diet, mentions two proposals: 1. The proposals of the Duke of Saxe-Meiningen in 1860, for a personal interview of the Sovereigns with the view to arrange

the establishment of a directory of three, in which one member, elected by the smaller States, should sit by the side of the representatives of Austria and Prussia ; 2. The declaration of Saxe-Coburg Gotha in 1861, made formally in the Diet, that if the monarchical principle was not to be sacrificed, German Unity could only be brought about by individual will, resting on a general representation of the German people.

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## CHAPTER IV

Austria's Position—Differences between Austria and Prussia—Gastein Convention—Difficulties in the Duchies—European Powers endeavour to preserve peace—Entry of Prussian troops into Holstein—Dissolution of the Diet—Commencement of hostilities—Treaty of Prague.

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1864-66.  
Austria's  
position.

THE powerless condition of the Middle States; the new spirit and confidence infused into the Prussian mind by the successes of the Prussian Army; the earnest desire of Prussia for a United Germany (a *Bundes Staat*), which seemed to have received a new impulse; the rather secondary part which Austria had played during the late events; were signs of the provisional nature of the present condition of things. Austria well knew that every plan of reform of the German Constitution which Prussia had proposed entailed her exclusion from Germany; she had aided Prussia in proving how necessary this reform was. It was impossible to believe that the Bavarian Triad or her own project would be accepted by Prussia. It was her policy, then, to give some semblance of power to that body by which alone she could hope to maintain her position in Germany. She, on the other hand, apparently seized every opportunity of weakening the authority of the Diet. The failure of the attempt which the

Middle States had made to form a Union, which was to hold the balance between the two great Powers, proved that nothing could be expected of them. Particularist ideas were dominant with them ; and it was impossible to hope that they would willingly surrender any portion of their sovereign rights for the sake of a United Germany. The unity of action which subsisted between Austria and Prussia during the war which had just ended, was no sign that they were being drawn closer together. In one question, and that the most important, they would always remain sharply antagonistic. The ingenuity of no statesman could devise means for bringing them to an understanding on the Constitution of Germany. Two powerful nations with totally irreconcilable ideas on a question the solution of which was postponed from day to day, but which was daily being brought forward, must sooner or later settle their differences by the sword. There could not be two kings in Brentford. Their union on the Slesvig-Holstein question deceived no one. It was this very union that hastened the catastrophe.

The danger of a common administration of a country by two nations, whose views are distinct, is apparent to a child. The danger is increased when the governed country itself is eager to strike out a third line of policy. In undertaking with Austria the government of the Duchies, Prussia had but one object in view, the incorporation of these countries into her territory. Towards this end

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1864-66. Herr v. Bismarck was steadily working. Austria desired to see a State formed in the North, which should attach itself to her policy, and form a source of annoyance to Prussia. But she did not desire to grant the Duchies the independence they demanded. The Duchies wished to free themselves entirely from the influence of the two great Powers, and to form an independent State, a member naturally of the German Confederation, under the rule of the Prince of Augustenburg. These three aims were so irreconcilable that it would require much tact and patience to avoid a collision. Of the three, that of the Duchies is the juster and more logical. By the law of the agnatic succession, which was in force in the Duchies before the introduction of the law of the cognate succession, the Duke of Augustenburg was the rightful heir to the Ducal Throne. The Treaty of London had, no doubt, settled the succession on King Christian, and had formed the Duchies and Denmark into one State, preserving to the former their political rights; but as this State had been dissolved, the Duchies would enter into the enjoyment of those laws which existed before their close union with Denmark. This latter country had ceded the Duchies to Austria and Prussia without reserve; and it would be an inconsequent act were these two countries to ignore those rights for which they had fought. The Duchies might say with force: 'You went to war to force Denmark to respect our ancient and traditional rights; now that you have been

victorious with our help you surely cannot avoid placing us in full possession and enjoyment of those rights. Holstein-Lauenburg has always formed part of the German Confederation, and there is no reason that she should cease to do so. Slesvig, however, is, and has been, in a different position. On no ground can the German Confederation lay any claim to her. She is willing to form one State with Holstein, and to enter the Confederation, but not as a vassal to any Power.'

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For political reasons, however, it is clear that Prussia could not allow the formation of a new State in the North, which would almost inevitably, like the Middle and most of the smaller States, lean towards Austria, and add one more to the opponents of Prussian policy in Germany. It is equally clear that Austria could not permit the incorporation with Prussia of a country which would increase her seaboard and enable her to take a stronger and more menacing position.

Each party worked actively in the Duchies in favour of their respective views. Prussia, forgetting her former statements, attacked the legitimacy of the claim of the Duke of Augustenburg, and prevented the assembling of the Provincial Diets. To place matters on a more satisfactory footing, an agreement was come to at Gastein (August 14, 1865) between the two Powers, by which it was settled that the Duchies should be separated ; that Prussia should be entrusted with the administration of Slesvig, and

Gastein  
Conven-  
tion.

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1864-66. Austria with that of Holstein. Austria further ceded Lauenburg to Prussia for the sum of 2,500,000 Danish dollars (about 250,000*l.*); and Prussia was also to have possession of Kiel, in order to commence building naval establishments there. The fortress of Rendsburg was to be garrisoned in common.<sup>1</sup> Considerable excitement was produced in the Duchies by this compact. One of the chief complaints they had had against Denmark was her refusal to allow them to become united; and they now found their friends and protectors following the same line of policy.

General Manteuffel was named Governor of Slesvig, and endeavoured to win the sympathies of the inhabitants. He met, however, with little success. The people of Slesvig had no desire to form part of the Prussian kingdom, and they were grieved to find that the hopes they had cherished were blasted. The Austrian Governor of Holstein, General von Gablenz, pursued a line of policy which was distasteful to Prussia, because it was successful in alienating the Duchy from her, and in making it look to Austria as its natural ally. Prussia had always been opposed to the meeting of the Provincial Diets, as she well knew that they would pass resolutions acknowledging the Duke of Augustenburg as their rightful ruler, and demanding the union and autonomy of the Duchies. In January 1866 a mass meeting was held at Altona, with the sanction of General von Gablenz,

<sup>1</sup> Herr v. Bismarck was raised to the dignity of Count for his skill in obtaining possession of Slesvig.

at which resolutions were passed demanding the convocation of the Provincial Diets. Austria was perfectly ready to agree to these resolutions. Count Bismarck thereupon addressed a note to Count Mensdorff (the Austrian Minister for Foreign Affairs), in which a long series of complaints was made against the course which Austria was pursuing in Holstein, and which, if continued, would seriously endanger the good relations hitherto existing between the two Powers. Austria, who saw clearly the goal towards which Prussia was striving, replied that she would never consent to the annexation of the Duchies to Prussia, even at the cost of a rupture. It required but little foresight to see that war would very probably be the consequence, and the two Powers commenced their preparations. Austria applied to the Diet and to the Middle States to aid her in case of attack on the part of Prussia, and the 7th, 8th, 9th, and 10th Army Corps were mobilized. Prussia addressed a circular note to the German States in which she begged them to inform her what course they would pursue, supposing she were attacked by Austria. The majority of these States referred her to the Diet. Prussia then endeavoured to arrive at a peaceful solution by making overtures at Vienna. She proposed that Austria should have the conduct of affairs in South Germany, if North Germany and Slesvig-Holstein were resigned to her. Austria declined the proposal, foreseeing that war was inevitable, and preferring that it should come sooner than later.

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Holstein  
demands  
convoca-  
tion of Pro-  
vincial  
Diets.

Represen-  
tations of  
Prussia.

Austria ap-  
peals to the  
Diet.

Prussian  
proposals.

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1864-66.

Attempts of  
European  
Powers to  
preserve  
peace.

The European Powers now stepped in, to use their influence in preventing an outbreak of hostilities. Identical notes were despatched from London, Paris, and St. Petersburg, to Berlin, Vienna, Florence, and Frankfort, inviting the Powers to a conference to discuss the three following questions, and, if possible, to solve them by diplomacy : 1. The Duchies ; 2. Venice ; 3. The Reform of the German Constitution. Prussia, Italy, and the Diet at once accepted the invitations. Austria said that she would attend only under certain conditions. She must exact a promise that the discussions at the Conference were not to lead to any territorial aggrandisement or increase of power to any of the Powers taking part in it. She also disclaimed any intention ever to cede Venice, and declined to receive therefor any money compensation or any other equivalent. As these conditions amounted to a refusal, the three Powers withdrew their invitations, and declared their endeavours to have failed. Austria now took a decided step. She placed the solution of the Slesvig-Holstein question in the hands of the Diet, promising to abide by its decision, and stated at the same time that she had given her Governor in Holstein orders to summon the Diet of the Duchy. Prussia at once, and with justice, declared that this step was a breach of the Gastein Convention ; for by a secret article in that compact, and which was now published in the Official Gazette at Berlin, the two Powers had bound themselves not to take any

Austria  
places  
question in  
the hands  
of the Diet.

step affecting the Duchies without previous concert. Both Powers, further, had always denied the right of the Diet to interfere in the Slesvig-Holstein question, although the latter had protested in 1864 against the two Powers acting independently in a matter which affected a member of the Confederation. Prussia said that, the Gastein Convention having been violated, the *status quo ante* must be reverted to, namely, a common Government of the two Duchies by her and Austria; and she consequently marched her troops into Holstein. General von Manteuffel on entering Holstein issued a proclamation in which he promised to call together a common representative Assembly for both Duchies. General Gablenz had too weak a force to resist the Prussians, and he therefore retired from Holstein, and marched through Hanover towards Austria. The Prussian Government immediately appointed a Civil Governor for Holstein, and took the direction of affairs entirely into their own hands.

Austria complained to the Diet that Prussia had hereby violated the Federal Act (Bundes Act), and requested the mobilization of the several Federal Army Corps, and the appointment of a Federal Commander-in-chief. It is hard to see in what manner Prussia had violated the Bundes Act. As I mentioned before, both countries had denied the right of the Diet to interfere in the Duchies, and in fact had agreed to a convention whereby they shut out the Diet from any intervention. The Bundes Act

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1864-66.

Entry of  
Prussian  
troops into  
Holstein.

Austria  
requests  
mobiliza-  
tion of  
Federal  
Army.

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1864-66. provided that in cases of difference between two States, the questions at issue should be submitted to an Austrägal Instanz for settlement; and Austria had no doubt taken the first step towards this by laying the matter before the Diet; but Prussia had shown that this was a breach of the Gastein Convention.

The fact of the entry of Prussian troops into Holstein was not a breach of any of the provisions of the Bundes Act; but to call upon the Diet to mobilize the Federal Army against a member of the Confederation was contrary to the spirit and letter of the Bundes Act and the Final Act of Vienna. The Diet could appoint a corps to carry out an execution against a Federal State, but that was a very different thing from the whole Federal Army being employed in a formal war against one German State. The Federal Army was not intended to be brought into requisition except to repel a foreign foe. By the Federal Act members of the Confederation are strictly forbidden to make war on each other. In case of a State proving refractory, a summons was addressed to it to conform to the resolutions of the Diet; in case of refusal an execution was ordered, and a State or States charged with carrying it out. But before the last forcible means were taken, another summons was made, so as to give the peccant State another chance of avoiding punishment. The mobilization of the Federal Army was a violation of Articles XI. and XX. of the Federal

Act, and of Articles LIV. and LXIII. of the Final Act of Vienna.

But these reasons had no weight with the Diet, who decided by nine votes to six, on June 14, 1866, to accede to the demands of Austria. The Prussian representative, De Savigny, thereupon declared that his Government looked upon the vote as a declaration of war, and as being quite incompatible with the Bundes Act; that this Act was violated, and that therefore the bond of union between the members of the Confederation was dissolved. He accordingly left the Hall of Deliberation. Prussia issued a circular note to the German Governments proposing a new Confederation, from which Austria and Luxembourg were to be excluded. Prussia was to have the presidency of the Diet, and the South German Contingents were to be placed under the command of Bavaria. A German Parliament was to be elected by direct votes from electoral districts of 100,000 and 50,000 souls.<sup>1</sup> The Federal States were to form one common Customs and Commercial Territory; and the command of the Navy in the North Sea and Baltic was to be given to Prussia. There was no expectation or possibility that this plan would be accepted at this juncture, but it is the outline of the Constitution of the North German Confederation, and it is significant that even before

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Diet accede  
to Austrian  
demands.

With-  
drawal of  
Prussian  
represen-  
tative.

Prussian  
project for  
a new Con-  
stitution.

<sup>1</sup> The normal electoral district consisted of 100,000 souls, but if, as is explained hereafter, in Chap. VI., there was a surplus of voters, these could be formed into a district of 50,000 souls, which should be in the same position as the larger one.

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1864-66. a shot had been fired the ground was being prepared for the new and more vigorous plant which was to replace the decayed tree which had so long cumbered the earth.

Dissolution  
of the Diet.

The Diet protracted its sittings for a short time longer, the smaller States leaving it daily. On July 14, it transferred its seat to Augsburg, and on August 24, 1866, held its last sitting. I cannot refrain from quoting the remarks which the German historian Arnd makes on this event: 'Here the German Confederation ceased to live in name as it had already done in fact. It was not the product of a certain epoch, sprung from its spirit and wants, but a work of necessity, of haste, and of artful calculation; only brought into being because no better combination offered itself, and because something had to be done to meet the exigencies of the moment. Among the many complex reasons which led to the downfall sixty years previously of the old German Empire, was the want of unity, of a really national bond which should unite all together, and the same need led to the dissolution of the German Confederation. . . . That the Diet either did not understand the spirit of the time, or intentionally opposed it, no one will now deny, not even those who were formerly its supporters. Credit is given it for having during its term of existence preserved peace in Germany. This was, however, the work of external circumstances, and in no wise a sign of the wisdom and power of the Diet. Peace since

Napoleon's time was a necessity to the States of Europe, who desired rest and time for recovery. The revolutionary movements which afterwards occurred in the west and south were kept away from the German frontier, not by the Diet, but by the united action of the two great German Powers. When at last Germany was shaken by the revolutionary disturbances of 1848, the Diet fell like a house of cards, at the first blow, and was only re-established by Austria's influence and Prussia's pliability. In itself it was one of the most impotent political assemblies that can be met with in history.<sup>1</sup>

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War was now virtually declared, but each party appeared unwilling to be the first to commence hostilities. Prussia addressed a circular note to Hanover, Saxony, and Electoral Hesse demanding categorically what line they would follow in case of an outbreak of hostilities, and they were given twenty-four hours to come to a decision. The note proposed that they should form an alliance with Prussia, and accept the German Parliament, declaring that in case of refusal, Prussian troops would occupy their territories, it being impossible for Prussia to allow three countries similarly situated to remain in a doubtful or hostile attitude at the present crisis. That the answer of these three States would be in the negative there could be little doubt, and preparations were made for their immediate occupation. The Austrian representative at Frank-

Prussia's  
note to  
Hanover,  
Saxony,  
and Elec-  
toral Hesse.

<sup>1</sup> Arnd's *Geschichte der Jahre 1860 bis 1867*, vol. i., p. 189.

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1864-66. fort had formally declared that if measures were taken by Prussia against Hanover, Saxony, and Electoral Hesse they would be energetically opposed by his Government. When, therefore, Prussian troops entered these countries, Prussia considered that Austria would carry out her threats, and, regarding the statement of the Austrian representative as a declaration of war, her armies in Silesia were set in movement against the Bohemian frontier. With regard to the other German States, Mecklenburg-Schwerin, Oldenburg, Anhalt, Reuss (elder branch) Waldeck, Lippe and the free towns of Bremen, Lubeck, and Hamburgh joined Prussia. Brunswick and Mecklenburg-Strelitz both agreed to the political reforms of Prussia, and to the convocation of a German Parliament, but expressed a desire, which was acceded to, to remain neutral.

Commencement of hostilities.  
Italy and Prusia.

As early as the beginning of March, General Govone had been sent on a secret mission from Florence to Berlin to negotiate an alliance between Prussia and Italy during the war that was then threatening. A treaty of alliance of three months' duration was signed between the two countries on April 8, 1866, in which Italy promised to support, with armed force if necessary, the Constitutional Reforms of Prussia in Germany, and was to receive Venice in return at the conclusion of peace. Although Italy was defeated in the war, both on land and sea, in the only battles in which she engaged, she attained the object for which she

undertook hostilities. The Emperor of Austria ceded the province of Venetia to France in order to obtain her mediation in the peace negotiations, and the Emperor of the French, a peace being signed, transferred it to Victor Emmanuel.

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Within seven weeks from the outbreak of hostilities the Hanoverian army had capitulated, the Elector of Hesse was a prisoner in the fortress of Stettin, the South Germanic armies were paralysed, the Austrian and Saxon forces had been signally defeated at Königgrätz, and the road to Vienna was open. No help from the neutral Powers could be looked for by Austria, and mediation in the peace negotiations was all she could obtain even from France. An armistice was concluded at Nickolsburg July 26, 1866, which led to the definitive treaty of peace signed at Prague August 23, 1866.

Treaty of  
Prague.

The augmentation which Prussia thereby acquired was very considerable, and she has been much reproached for the grasping spirit she evinced. The adherents to the policy of Prussia repel these reproaches. The object for which she had been striving, and for the attainment of which she had expended much blood and treasure, was the unity of Germany; and although this was not accomplished, a great step had been made in advance. It was inevitable that some particular interests should be sacrificed in the achievement of a great national reform. The entire incorporation of some States with the dominions of Prussia could be justified

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1864-66. on the ground that the State who was to be at the head of the German body politic should be made as powerful as possible. Prussia was the State which had staked most on the struggle for the fulfilment of the desires of all true Germans, and it was but just that she should receive her reward. It was absolutely necessary that countries like Hanover, Hesse, and Nassau should be absorbed. Their dynastical policy ran counter to the work which Prussia had undertaken. The obstacles must be removed. Saxony saved herself from absorption by accepting the alternative of vassalage. It was impossible for Prussia to re-establish the *status quo ante bellum* : the existence of antagonistic States of the doubtful importance of Hanover, Hesse, and others, in the midst of a Confederation which must consist of homogeneous and harmonious parts, could not be permitted by the country which had originated, fought for, and was about to lead, this Confederation.

## CHAPTER V.

Armistice of Nickolsburg—Treaty of Prague—The new Constitution—The South German States—The annexed provinces—The Luxembourg question—The reorganization of Germany—Establishment of the German Empire.

By the armistice concluded at Nickolsburg on July 26, 1866, the Emperor of Austria recognised the dissolution of the Germanic Confederation, as it had hitherto existed, and agreed to a new organization of Germany without the participation of Austria. His Majesty likewise promised to recognize the Confederation which the King of Prussia would establish north of the line of the Main, and declared himself willing that the German States south of this line should enter into a union, whose relations with the North German Confederation were to be the subject of an ulterior agreement between the two parties. Article X. of the Treaty of Prague added the words, 'And which shall have an international and independent existence.'

A Definitive Treaty of Peace was signed at Prague August 23, 1866, and Prussia concluded separate treaties of peace with the other German States. The Treaty of Prague increased the territory of Prussia by 1,308 square miles, and her population

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1866-71.  
Armistice  
of Nickols-  
burg.

Treaty of  
Prague.

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Prussian  
acquisi-  
tions  
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by 4,815,000. The acquisition of Hanover, Electoral Hesse, Nassau, and Frankfort was claimed by Prussia by right of conquest. Prussia had declared on June 14, 1866, that she considered the Confederation dissolved by the declaration of war, and that she therefore stood as a European Power and not as a member of the Confederation towards those countries. These acquisitions were, of course, recognised by Austria and the other German States in the several treaties. The incorporation of Slesvig and Holstein rested on the grounds of right of conquest and of cession. Denmark, in 1864, had ceded the Duchies to Austria and Prussia, and in 1866 Austria handed them over entirely to Prussia. As the Duke of Augustenburg had taken the side of the Austrians during the late war, his rights were considered abrogated by right of conquest. But by the influence of the Emperor of the French the thorny Art. V. was inserted in the Treaty of Prague. It runs as follows:—‘His Majesty the Emperor of Austria transfers to His Majesty the King of Prussia all the rights which he acquired by the Vienna Treaty of Peace of October 30, 1864, over the Duchies of Holstein and Slesvig, with the condition, that the populations of the northern districts of Slesvig shall be ceded to Denmark if, by a free vote, they express a wish to be united to that country.’

The countries north of the Main entered into treaties of offensive and defensive alliance, by which

they agreed to maintain inviolate the independence of each separate State. These treaties were to be in force for a year, during which period a parliament was to be elected according to the provisions of the Electoral Law of 1849 promulgated by the Frankfort Parliament; and plenipotentiaries from each of the contracting States met at Berlin on December 15 to discuss a draft constitution, based on the Prussian proposal of June 10, which Prussia had issued before the dissolution of the Diet. The work on which they were employed took several months to accomplish. The Constitution was to be submitted to the Parliament on its assembling.

The Electoral Law<sup>1</sup> was accepted without much difficulty by the Assemblies of the different States, as it was seen that Parliament must be called together as soon as possible; but some of the States amended the law in a small degree to suit their special circumstances. The elections took place on February 12, 1867. As a German writer remarks, 'It was the first time since 1848 that the people elected their representatives by universal suffrage, and the first time in the existence of the German nation that the elections took place by direct vote, and not through the medium of electors.' The number of members to be elected amounted to 297,

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Meeting of  
plenipo-  
tentia-  
ries to  
discuss new  
Constitu-  
tion.

Elections  
for Parlia-  
ment.

<sup>1</sup> In Prussia the election took place under the Prussian Electoral Law of 1866, which very closely resembled that of the Frankfort Parliament.

CHAP. V. of whom 193 were to be elected by the old provinces of Prussia, 43 by the new ones, including 1866-71. Lauenburg, and 61 by the other North German States. On February 14, 1867, this first constituent parliament (Reichstag) was opened by the King of Prussia in the white hall of the palace at Berlin. In this Reichstag the two most important parties were, what are now called, the Fortschritt-Partei (the Progressist Party), and the National Liberal Partei (the National Liberal Party). The Progressists subordinated the idea of German unity to that of liberty, and considered that the former should be made the consequence of the latter. The National Liberals were, as their name implies, imbued with the desire for a united Germany before everything, and considered that liberty should and would naturally succeed unity.

Acceptation of new Constitution.

The Reichstag at once proceeded to discuss in a full house the draft Constitution which was laid before it. Great pressure was put upon the members to hasten their work, as the project, to which they were to give their sanction, would have to be ratified by the twenty-two Governments, and the date for the expiration of the alliances was not far distant. It was also necessary for another and more important reason that as little delay as possible should be allowed. Foreign Governments, and above all Germany's powerful neighbours, should be convinced that a United North Germany was an accomplished fact. Time was not then wasted

in those fruitless and abstract discussions which characterised the Frankfort Parliament ; and in less than two months the Constitution, slightly amended, was passed by 230 to 53 votes. There were only two amendments which need be mentioned. An amendment was passed granting allowances to members of the Reichstag, and another one limiting the maintenance of the peace establishment, viz. in the ratio of one per cent. of the population, to five years instead of ten years. These two amendments Count Bismarck declared he could not accept. The Reichstag gave way on the allowance question, but held firm to that of the army organization, and eventually gained their point.

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1866-71.

The ratification by the Representative Assemblies of the several States quickly followed, and on July 1, 1867, the new Constitution may be said to have come into force.

The importance and magnitude of the reform which had been introduced into Germany cannot be overrated. From an ill-assorted, weak Confederation of States (Staatenbund) had arisen a compact and powerful Federative State (Bundes-staat). The impotent and unpopular Diet had been succeeded by a Parliament chosen from, and by the people, exercising real power in the government of affairs. The military system, which had been a source of great weakness to Germany, had been thoroughly reformed, and the direction of military matters was placed in the hands of one man. The rivalry

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1866-71. between Austria and Prussia, and the evils consequent thereon, had been removed. The Middle States, those persistent enemies of all reforms, benevolent or otherwise, had ceased to exist. Bavaria, Wurtemberg, and Baden were not of the fold; Hanover and Electoral Hesse had vanished from the map of Europe; Saxony was a subservient vassal to her powerful neighbour.

The South German States.

To turn to the South German States. An article in the 'Nickolsburg Armistice,' which was repeated in the Treaty of Prague, reserved to the South German States the liberty of forming a Union among themselves, and of allying this Union to that of the North German Confederation. This article was never carried out. Probably no one wished that it should be. The time was not yet ripe for a closer connection between North and South Germany than that which existed through the offensive and defensive alliances and the Customs Union; and, till that moment arrived, Prussia probably did not desire to see a Union of the Southern States which would be indirectly under Austria's influence. Austria, on the other hand, was fearful that if the Southern States did unite, Prussia would obtain their incorporation into the North German Confederation. There was, further, scarcely sufficient sympathy between the Southern States themselves to induce them to enter into a close connection. France had procured the insertion of this article in the vague hope of establishing, if only in appear-

ance, a counterpoise to the North German Confederation. The offensive and defensive alliances with Prussia afforded sufficient security to the latter in case of an outbreak of hostilities with a foreign Power. They were concluded in August, 1866, at the same time as the treaties of peace were signed, but they were kept secret till the threatening appearance of the Luxemburg difficulty rendered their publication necessary.

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1866-71.

Bavaria and Wurtemberg were not averse to a United Germany, but they were unwilling to grant Prussia the very prominent place she claimed. They were not unwilling, however, to form the offensive and defensive alliances, as, without placing themselves in the position of Saxony, they thereby satisfied, in a small degree, the wishes of the nationalists in their respective countries. They both, to a certain extent, adopted the military organization of Prussia. Count Beust complained, in a despatch to the Representative of Austria-Hungary in Berlin, that these alliances were a breach of Article IV. of the Treaty of Prague, as it was impossible, he said, to assert that an offensive and defensive alliance between a stronger and a weaker State did not seriously affect the independent international existence of the latter, which this article had expressly reserved to them. But this despatch did not change the policy either of the North German Confederation or of the Southern States.

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1866-71.

Hesse.

The position of Hesse was a peculiar one, as one half of her territory was north of the Main, and was therefore included in the North German Confederation, while the southern half maintained an independent position. She concluded a military convention with Prussia, by which she placed all her troops under the command of the latter; she also placed the administration of her posts and telegraphs in the hands of this Power. The Upper Chamber of Hesse, however, refused to agree to the proposals of the Lower House that Hesse should, in its entirety, join the North German Confederation. Baden was anxious to enter the newly-formed Confederation, but did not wish to do so by herself. It was manifest that the exclusion of the South German States was only temporary, and that some great event alone was needed to weld the whole of Germany together.

The  
annexed  
provinces.

Although there was some discontent in the annexed provinces, it did not extend very widely, and the central Power was too strong to admit of this discontent taking any active form. Germany had not been accustomed to see the principle of legitimacy violated, and it was not in their own States alone that the deposed sovereigns found sympathy. In Hanover a plot was discovered for forming a legion, which, in case of a war between France and Germany, was to rise in arms against the Fatherland, and endeavour to reinstate King George upon his throne. Many arrests, and the

flight of many of those implicated to France, whither the legion transferred its activity, were the results. Prussia pursued a conciliatory policy towards the States which she had annexed. She attempted to conciliate their particular interests with the measures she was forced to take for the consolidation of the new Confederation. The new army organization was perhaps the innovation which created the greatest opposition. The severe discipline and the liability of everyone to military service brought home to each individual the price he had to pay for his political ideal. Many who had cried loudly for national unity would now have preferred to return to the old order of things rather than have their liberty of action fettered. It was now that emigration drained Germany of many of her sons, and grew to dimensions which gave, and still give, the Government cause for reflection.

A question now arose which at one time threatened to produce serious complications. At the Congress of Vienna, Luxemburg had been given to the King of Holland, but not absolutely. It was to be a member of the German Confederation; the town was to be considered a Federal fortress, and to have a Prussian garrison. After the war of 1866, Luxemburg ceased to be a member of the German Confederation, and the King of the Netherlands, wishing to find an ally to support him in case of need against his powerful neighbour, turned to France, who seizing upon the opportunity

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The Lux-  
emburg  
question.

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1866-71. to get a footing in Germany undertook to take over Luxemburg, and to pay Holland a sum of money for the acquisition. As soon as this agreement was made public there was a loud outcry in Germany against a former Federal State being sold to a Foreign Power, and the determination was expressed on no account to allow the agreement to be carried out. The question was referred to a Congress which met in London in May, 1867, and it was decided that the five great Powers should guarantee the neutrality of Luxemburg, which was to remain in personal union with Holland; that the fortifications were to be razed, and the Prussian garrison withdrawn. Luxemburg still remained in the Customs Union, but was only regarded as a foreign land adhering to the Union, and not represented either in the Customs Federal Council or in the Customs Parliament. The other portion of the King of Holland's dominions, Limburg, which had formed part of the German Confederation, was also released from its connection with Germany. In language, customs, feelings, and descent the inhabitants of Limburg were totally distinct from the Germans.

Stimulus to  
political  
life in  
Germany.

The Luxemburg incident was the only question of foreign policy which during the four years following the Seven Weeks' War gave the North German statesmen cause for uneasiness. The question having been peacefully solved they could now devote the whole of their attention to the great

work of the reorganization of Germany. The opening of the new Parliament had given a great stimulus to political life in Germany. Although their sphere was narrowed, and they had almost descended to the position of mere vestries, the Assemblies of the different States showed an increased activity and a heartier interest in the work on which they were engaged. The political societies became more numerous ; and in the case of those of the social democratic party, which was making many converts, bolder and more exacting in their demands. The newly-acquired rights of freedom of speech and freedom of the press were, naturally, in many cases misused.

In the early part of the session of February a motion was brought forward by Herr Laske, in the Reichstag for the admission of Baden into the Confederation.<sup>1</sup> Baden was most anxious to enter the North German Confederation, but Count Bismarck successfully combated the idea by pointing out that Baden was of more benefit to the Confederation in her present position than if she was received within the fold. She was the only one of the South German States thoroughly imbued with national ideas, and she could therefore be a most effectual instrument in aiding the development of a national policy in the South, while if she were withdrawn

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1866-71.

Baden  
and the  
North Ger-  
man Con-  
federation.

<sup>1</sup> This motion was not really against the Constitution, as it arose incidentally during the discussion of a treaty between the Confederation and Baden, and was not of a formal nature.

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1866-71. and the other Southern States left to themselves, this great work would be impeded and delayed.

Franco-  
German  
War.

The South  
German  
States ad-  
mitted into  
North Ger-  
man Con-  
federation.

We are now on the threshold of the great Franco-German War. This war is of such very recent occurrence, the causes which led to it have been so often discussed, that I consider it superfluous to do more than mention the fact of the declaration of war, and pass on to the moment when the representatives of the South German States arrived in Versailles to negotiate for the admission of these States into the North German Confederation. This step was a natural one, and it was patent to all that after the successes of the German army it would be impossible for the connection between North and South Germany to rest merely on offensive and defensive alliances. It was from Bavaria that the proposal came to place the Imperial Crown on the head of the King of Prussia, and to secure the succession to his descendants ; and she thereby took the position to which she was entitled, of the second Power in Germany. The negotiations with Bavaria alone offered any difficulties, but these were soon conquered, and on November 24, 1870, the treaties were laid before the Reichstag for their approval, the necessary two-thirds majority in the Federal Council having already given their consent. The Reichstag agreed to the treaties ; and also to the King of Prussia receiving the title of 'German Emperor,'<sup>1</sup>

<sup>1</sup> It is unfortunate that there is so much carelessness in England with regard to the title to be given to the German Emperor. He is

and to the North German Confederation being transformed into the 'German Empire.' A deputation of thirty members of the Reichstag was then sent to Versailles to request the King of Prussia to accept the Imperial Crown ; and on January 8, 1871, His Majesty solemnly proclaimed at Versailles the re-establishment of the German Imperial Dignity.

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The treaties had to be submitted to the Assemblies of the four Southern States, and were agreed to by them. The exchange of ratifications took place with Baden, Hesse, and Wurtemburg before January 1, 1871, and the Bavarian ratifications were exchanged on January 29, 1871 ; but January 1 is considered as the day on which the new Constitution came into force. Elections for the first German Parliament, on the basis of the electoral law of 1869, were ordered by the Emperor, and the new Parliament met on March 21, 1871.

The first work was to gather into one document the three instruments which contained the Constitution of the new Empire : namely, the Treaty between the North German Confederation and Bavaria, of November 23, 1870 ; the Treaty between the North German Confederation, Baden and Hesse, of November 15, 1870 ; and the Treaty between the North German Confederation, Baden and Hesse, on the one side, and Wurtemberg on the other, of November 25,

frequently called Emperor of Germany : this is as absurd as if we talked of the King of Belgium, or the Queen of the English. The Crown Prince of Prussia received the title of Crown Prince of the German Empire.

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1866-71. 1870. A 'Project of Law respecting the Constitution of the German Empire,' accompanied by the Draft of a 'Charter of the Constitution of the German Empire,' was laid before the Reichstag by the Chancellor, and received the sanction of that body as well as of the Federal Council. It was published, and came into force on April 16, 1871.

We now leave the German Empire established by law. It apparently possesses most of the necessary conditions of power and durability. Past experience will prevent the hasty surrender of a prize won after a struggle of over half a century. Great successes, gained in common bind men together almost as closely as common suffering under great adversities. The Constitution, further, is not a mere provisional stopgap like that of 1815, nor one based on abstract theories like that of 1849. It was originated and elaborated by men admirably fitted for the task, who had great experience, a well-defined object, and past failures to guide and warn them. Not a session is allowed to pass without some improvement being made, some doubtful point being cleared up, some want supplied. The rivalry of the two great Powers, which had rendered fruitless so many former attempts at unity, had for some time ceased to exist. Undisputed head of Germany, the centre of political life and military power, Prussia could now develop and extend those principles for which she had so long contended. But the path of German statesmen will not be without many difficulties. A

great struggle between the two most powerful adversaries in this world has commenced, and is but yet in its infancy. Social questions, which now move men far more than was the case in past times, are assuming most important dimensions. And is the political machine so perfected, and does it work so harmoniously, that, when the great master mind which at present directs it has passed away, its steady, uniform action will continue uninterruptedly? Germany has gained her ideal; has she surrendered nothing for the attainment of it?

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## CHAPTER VI.

Laws of Central Power—Charter of the Constitution—Presidency of the Confederation—The Federal Council—Federal Court of Appeal—The Reichstag—Electoral Law—Railways and Finances—The Revenue of the Confederation—The Customs Union—The Constitution of 1871.

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THE new Confederation was no longer a Confederation of States (Staatenbund), but a Federative State (Bundes-staat) composed of nineteen monarchies and three republics, Bremen, Lubeck, and Hamburg, under one Central Power. The Central Power consisted—  
 1. Of the King of Prussia, as head of the Confederation, and Commander-in-Chief of the Federal Forces ; 2. Of the Federal Council, consisting of forty-three representatives of twenty-two different States ; 3. Of the Reichstag, a parliament elected by direct votes and universal suffrage. The Confederation could not be dissolved ; that is, no State of its own free will could withdraw from it. Obedience to the Confederation and to its decrees and laws was to be preferred to obedience to the decrees, laws, &c. of any particular State. If any law of any particular State clashed with, or ran counter to, a law issued by the Central Power, the former must be withdrawn.

The Con-  
stitution of  
1867.

The  
Central  
Power.

Scope of  
the laws of  
the Central  
Power.

Laws of particular States, on the other hand, could be transformed into Federal laws binding on the whole of the Confederation, as was the case in the Prussian law for military service ; the Prussian law of June 4, 1851, respecting a declaration of a state of siege ; the Customs Union Treaties, and others.

The population of the Confederation was very <sup>Population</sup> nearly 30,000,000 souls, and of these very nearly 24,000,000 belonged to Prussia.

Every State was in reality a State with incomplete sovereign rights, Prussia not excepted, and preserved its autonomy merely in matters of internal legislation. The question whether one State could alter its form of government without reference to the Confederation must be answered in the affirmative ; but only under certain conditions. The Confederation reserved to itself the right of interfering in the affairs of any State where there was danger of the general order and security being disturbed ; and this excuse could naturally be put forward on very slight grounds. One State again could cede territory to another without the sanction of the Central Power ; and there was, indeed, no article in the Constitution which prevented a State from ceding some of its sovereign rights to a foreign Power, by entering into a personal Union for instance. An attempt had been made to insert a clause preventing this, but the clause was thrown out by the Reichstag.

Each subject of every State had perfect freedom of migration and of settlement. In whatever Federal

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Relation of  
Central  
Power to  
the several  
States.

Rights of  
the subject.

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State he took up his abode he had a claim to every civil right possessed by a subject of that State. He could acquire property, and enjoy the same commercial liberty as a natural-born subject. This privilege was confirmed by the law of June 6, 1870. With regard to his military service, he was called upon to serve in that contingent in whose territory he was domiciled at the time of his attaining the age for military service; while volunteers could select what contingent they pleased. If a subject of one State was domiciled in another, he paid direct taxes to that State alone in which he had his domicile. If he possessed a domicile in his own State, and also in another State, he paid direct taxes to the former only. If he had no domicile in any State he paid direct taxes to the State in whose territory he might be residing for the moment. This was laid down by the law of May 13, 1870.

The personal freedom of the subject was largely extended by the new Constitution. For, not only was the freedom of migration and settlement granted, but other substantial rights also—the right of association, of petitioning; freedom of the press; equality of all religious sects; permission to employers of labour as well as to the workmen themselves to combine and form unions, &c;—and it must be borne in mind that although some of these rights had been nominally granted before, there was then no German Parliament elected from and by the people to secure the maintenance of those rights. Perhaps of all the

newly-acquired rights the one which was most appreciated was the freedom of migration from one State to another. Though freedom of migration had been granted in the Bundes Act with the proviso that the State which the emigrant selected should show its readiness to accept him as a subject, this freedom had been so hampered by rules and forms which had to be complied with as to render its exercise a very doubtful benefit. It required much time and some money before a subject of one State could change his abode. By the new Constitution it was a matter merely of a railway fare and journey, provided the man seeking to acquire a new domicile did not belong to any of the following classes : 1. Those who had been expelled from another State owing to their having committed some crime : 2. Those who were mentally or physically unable to support themselves ; and 3. Those who had received aid from public funds. In any of these cases the authorities of the country where the emigrant intended to settle might decline to receive him.

The Charter of the new German Constitution consisted of seventy-nine articles and of fifteen sections, which treated of the following subjects :—1. Federal territory ; 2. Federal legislation ; 3. Federal Council ; 4. Federal Presidency ; 5. Reichstag ; 6. Customs and commercial system ; 7. Railways ; 8. Posts and telegraphs ; 9. Navy and navigation laws ; 10. Consular Service ; 11. Federal military system ; 12. Federal finance ; 13. Settlement of

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differences between States, and code of punishment ; 14. General review ; 15. Relations to the South German States.

The Central Power (Bundes-Gewalt) consisted of three factors : the Presidency (Bundes-Präsidium), the Federal Council (Bundes-Rath), and the Federal Parliament (Reichstag).

Right of Central Power to legislate.

The Central Power had an exclusive right of legislation in—1. Reform and improvement of the Constitution ; 2. The whole military system ; 3. The Consular Service ; 4. Posts and telegraphs ; 5. The regulation of the commercial relations of the several members of the Confederation with each other, and of the Confederation with foreign countries ; laws respecting navigation ; protection of North German commerce and flag ; and emigration ; 6. The Federal finances ; the composition of the customs dues, and of the excise on home-manufactured beetroot sugar, salt, tobacco, brandy, and beer ; all the direct and indirect taxes imposed for Federal purposes, the banking system, coinage, and issue of paper money.

The Presidency of the Confederation.

The Presidency of the Confederation (Bundes-Präsidium) was vested in the Crown of Prussia. The King of Prussia was Commander-in-Chief of the Army and of the Navy. He possessed a limited veto in legislative questions. He could prevent the adoption of laws respecting the Army, Navy, and Customs, as well as regulations affecting the taxes on home-manufactured beer, tobacco, brandy, salt, and beetroot sugar, by giving his veto through the

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Chancellor, or through one of the Prussian representatives in the Federal Council. But as the sittings of this body were secret, the feelings of the other Governments were not injured by a public rejection of their resolutions on these matters by Prussia. Other laws, which required the assent of the Federal Council and of the Reichstag alone, came into force without the Crown of Prussia being able to veto them ; though, of course, an indirect influence might be exercised by means of the seventeen votes which Prussia possessed in the Federal Council ; and also by the right which the King of Prussia possessed of proroguing and dissolving the Federal Council and the Reichstag. The nomination of the Chancellor was in the hands of the Presidency, and through him all the laws, decrees, &c., of the Confederation were made public, and the necessary regulations prescribed for enforcing them. The King of Prussia had to carry out the execution ordained by the Federal Council against any recalcitrant member of the Confederation ; and in case of necessity to ordain one without consulting the Council. In this case the Chancellor was responsible, and had, as soon as the Federal Council was assembled, to obtain, so to speak, a Bill of Indemnity. The King of Prussia had the right to declare a state of siege in any Federal State, if circumstances should call for this measure. The right of summoning, proroguing, and dissolving the Federal Council and the Reichstag was in his hands. He was the representative of the Confede-

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ration with regard to Foreign Powers, and all diplomatic and consular appointments were in his nomination. Although some of the States still maintained representatives at foreign Courts, and received representatives in return, they could not claim this privilege as a right. The Crown of Prussia was willing that for small matters affecting their own subjects the States should send representatives to foreign countries, and, indeed, paid small sums to these States, to aid in the support of their diplomacy and foreign offices, but no encroachment was to be made in consequence upon the exclusive right of investigation and of representation which the Crown of Prussia possessed. Prussia still maintained representatives at the North German Courts to sustain her influence in those countries. The King of Prussia also furnished the exequaturs for foreign Consuls. He had the right of independently concluding treaties of alliance and treaties of peace with foreign Powers when these latter merely provided for the cessation of hostilities and for the establishment of perpetual peace and amity. These treaties had, however, to be countersigned by the Chancellor. If the treaties, however, encroached on the Constitution, or necessitated some alteration in the laws of the Confederation, an absolute majority in the Reichstag, and a two-thirds majority in the Federal Council were necessary before their ratification. Treaties which touched on minor matters required only a simple majority both in the Reichstag

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and the Federal Council before their ratification. The assent of the Federal Council had always to be obtained before the signature of a treaty, while the consent of the Reichstag was demanded after the treaty had been signed. Then followed the ratification by the Presidency of the Confederation. Each separate State was not prevented by the Constitution from concluding treaties with other States, provided these treaties in no way affected either the interests, the Constitution, the treaties or the laws of the Confederation, or any subject which was under its supervision and legislation. The King of Prussia had the right to declare war and to conduct the military operations in the name of the Confederation.

There was only one responsible minister of the North German Confederation, and that was the Chancellor, the head of the Federal Council.

The Chancellor.

No laws were binding, with the exception of those respecting the Army and Navy, which were not countersigned by him; and he was, therefore, responsible for them. But he was only responsible to the Confederation, and no assembly in any of the States could call him to account. The fact of his combining the offices of Chancellor and Prussian Prime Minister did not alter the case and place him under the authority of the Prussian Chambers. The Chancellor need not necessarily be a Prussian State official. A German constitutional writer of great repute<sup>1</sup> states 'that the Chancellor's responsibility

<sup>1</sup> Rönne, *Verfassungs-Recht des Deutschen Reiches*, p. 184.

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was only moral, and not legal. A special law establishing his responsibility would have been necessary to have bound him legally.' His responsibility did not of course extend to those laws which did not require to be countersigned by him, nor could he be responsible for any acts he might perform as a member of the Federal Council. Rönne reduced the responsibility of the Chancellor to the following two general cases:—1. He was responsible that the ordinances of the head of the Confederation, as far as they required the assent of the Federal Council, were in harmony with the resolutions of that body; 2. That the ordinances of the head of the Confederation, in so far as he could enforce them independently, did not violate the Constitution and laws of the Confederation.

Federal  
chancery.

The Chancellor was assisted by a Federal Chancery (Bundes-Kanzler-Amt), consisting of a President, four heads of departments, with four permanent assistants and the requisite number of clerks. To this office were entrusted the posts and telegraphs, the Federal Consular Service, the supervision of the customs and taxes, the arrangements with the several States respecting the application of the laws passed by the Federal Council and by the Reichstag, and a rather vaguely defined power of interference in questions affecting the commercial policy of the Confederation. It appears that the Federal Chancery gradually took into their hands the conduct of commercial treaties; but the head of the Confederation

announced that the sphere of action of the Federal Chancery in these matters was purposely left undefined. The railways were later put under the superintendence of this office.

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The Foreign Office of Prussia was transformed January 1, 1870 into that of the North German Confederation, and was named 'Foreign Office of the North German Confederation.' It was placed under the immediate direction of the Chancellor, and the former Under Secretary of the Prussian Foreign Office continued his functions with the title of Secretary of State for Foreign Affairs. The representatives were then called envoys of the North German Confederation, and bore as official arms the Prussian eagle surrounded with the inscription, 'Legation of the North German Confederation.' Till then the Prussian Foreign Office had paid their representatives abroad who acted as the representatives of the North German Confederation; now they were borne upon the budget for the whole of the Confederation.

The Federal Council is a unique creation. It combines the functions of a legislative assembly with those of a permanent executive body. It consisted of forty-three representatives from the several States, who acted on instructions from their respective Governments. The number of Representatives sent by each State were as follows: Prussia had seventeen, Saxony four, Mecklenburg-Schwerin two,

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Brunswick two, and the remaining eighteen States one each ; each representative having one vote.

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Prussia had added to the number of her votes in the old Plenum those of the countries she annexed. Of course her seventeen representatives could only vote together ; they could not be divided on any question whatsoever. The same was the case with the other countries having more than one vote. Prussia, with her seventeen votes, had therefore the power of vetoing any measure entailing a fundamental alteration in the laws of the Constitution, and consequently requiring a two-thirds majority of the Council, though she could not force any question through the Council against the will of the smaller States. The votes of the States were not considered valid in the following cases : 1. When they had not sent a representative to the Federal Council ; 2. When their representative did not attend the sitting ; 3. When he had not received any instructions respecting the questions on which a vote had to be taken. It was not within the power of the Federal Council to examine whether the vote of a representative agreed with his instructions or not.

The members of the Federal Council acted upon instructions which were given to them by the heads of their Governments, and which had to be countersigned by one of the responsible ministers of their countries. None of the members of the Council could be made responsible for any decision which might be arrived at in the Federal Council. The

Representative Assemblies of the several States had no power of interference in the instructions given to the representatives in the Federal Council. The representatives enjoyed the same diplomatic privileges as the representatives from foreign States.

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Prussian publicists lamented the weakness of their country in the Federal Council, but the enormous preponderance of moral force she possessed counterbalanced her numerical inferiority. Prussia had also reserved to herself another instrument of power in the Council, by not allowing the opinion of the majority to outweigh the wish of the Presidency in certain cases, such as those affecting the military system, the customs dues, and certain taxes. In such cases if the Presidency desired the maintenance of the *status quo*, no vote of the Council could alter his decision. Each member had the right of initiating a question, except as regarded the admission of a South German State into the Confederation, when the duty devolved on the Präsidium. Every member of the Federal Council had a right to attend the meetings of the Reichstag, and to state the views of his Government on the question under discussion ; but the Reichstag could not demand as a right the presence either of the Chancellor or of any member of the Council.

The functions of the Federal Council were rather comprehensive. Treaties with foreign Powers had to receive the approval of the Council before they were signed. This was the case in political treaties.

Functions  
of Federal  
Council.

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Extradition, commercial, and navigation treaties had first to be laid before the Reichstag, and then to receive the assent of the Council. The Federal Council had to act as a kind of police over the conduct of members of the Confederation, and to watch over the Federal finances. The judicial authority exercised by the Central Power was rather limited, owing to the want of a civil and criminal code for the whole Confederation at the time of the introduction of the Constitution. Later, however, in the spring of 1870, a penal code for the whole of the Confederation was published. A civil code and a general legal procedure are yet wanting. The Upper Court of Appeal at Lübeck was selected by the Federal Council to try cases of high treason against the Confederation. Differences between members of the Confederation were to be submitted to the Federal Council. A committee, or, as it was called, a Court of Arbitration was then elected by the Council, to whom was entrusted the settlement of the dispute ; the Council, of course, being responsible for the decisions of the Court. The interested parties took part in the vote for the election of this Court, as these settlements of difficulties were regarded rather as legislative than judicial acts. The right of each member of the Council to vote on any question was further an inalienable right. In commercial matters also a Federal Court of Appeal was instituted in June 1869 at Leipzig. Besides deciding in commercial cases the Court exercised also the same

powers as the Admiralty Court does in England.<sup>1</sup> The Court consisted of many members, seven of whom formed a quorum, and who were, for the convenient and expeditious despatch of business, divided into several Committees, or, as they were called, Senates. The members were paid from the Federal Chest. The Federal Council exercised jurisdiction over the Consuls of the Confederation so far as to be able to suspend or dismiss them. The rules which governed such cases were borrowed from the Prussian disciplinary law. The civil courts of each State were bound to help each other in the detection and punishment of offenders. In criminal cases the court of the place where the crime was perpetrated could obtain the surrender of the criminal from any of the other courts. The *forum delicti commissi* governs in Germany. There were a few cases in which the surrender of the offender could not be demanded, such as when the crime was political, or when he had employed the Press as his instrument. The Federal Council had always the power of ordering an execution in a refractory State. In extraordinary cases, requiring sudden action, this power was entrusted to the King of Prussia, as head of the Confederation.

There were seven Committees in the Federal Council. Two of these Committees, that for the

Com-  
mittees of  
the Federal  
Council.

<sup>1</sup> It may be as well to mention here that there was a commercial navy for the Confederation, bearing the same flag (black, white, red).

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Army and the Fortresses, and that for the Navy, were selected by the head of the Confederation from the Council, but without any reference to that body. In a separate Treaty with Saxony, of February 7, 1867, Prussia engaged always to have a Saxon representative on the Committee for the Army. The other five Committees were for Customs and Taxes, Commerce and Trade, Railways, Posts and Telegraphs, Justice, and for Statistics (Rechnungswesen). The members of these five Committees were chosen by the Federal Council. Article VIII. of the Constitution laid down that the head of the Confederation must be represented in each of the Committees; that besides his representative, there must be representatives of at least two of the other States; and that no State could have more than one vote in the Committees, although they might have several representatives. New elections for the Committees were held every time the Federal Council commenced a new session, the old members being eligible for re-election. These Committees could sit when the Council was in recess. The functions of the Committees were deliberative and administrative. They discussed and gave advice upon the matters which were laid before them by the head of the Confederation or by the Federal Council, and they also exercised a supervision over the administration of the affairs of the several Departments.

In the session of the Reichstag in 1869, the question of forming responsible Ministries was made

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a prominent subject of discussion. The chief objection, apparently, against the formation of responsible Ministries was, that they would either swamp the Federal Council, or that the Federal Council would render them useless. This was no doubt the dilemma ; and the question resolved itself into the simple one, which form of government would best suit the exigencies of the case—responsible Ministries, or the Committees of the Federal Council. Count Bismarck stoutly maintained that the latter were far preferable. Responsible Ministries, he argued, would destroy unity in administration, would impede the full development of the reorganisation of the Confederation, and would create mistrust and a feeling of uncertainty between the legislative and administrative bodies. In fact, he boldly announced his wish that there should be but one responsible Minister for Prussia. There is no doubt that at the time, North Germany could only be governed by a strong central Power ; and in this respect the Federal Council with one responsible Chancellor met the case excellently. It would have been a misfortune to have relegated the Federal Council to the position of the English House of Lords. Count Bismarck was accused of grasping at too much power. But was this really so ? Did not the smaller States exercise more influence in the Federal Council than they could possibly have done were all administrative power to be taken out of the hands of that body ? If they held together they

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could prevent Prussia forcing any measure through the Council ; while in Ministries, the heads of which would naturally be appointed by the King of Prussia, a greater hold would have been obtained by this country over the management of affairs. It was no argument to compare the Constitutions of other countries with that of North Germany. The circumstances in which North Germany was placed were totally different from those of any other country. Again, a trial at least should be given to these Committees. Some of their members were men well cognizant of their business, selected irrespective of their nationality, and fully competent to deal with the matters they had to administrate. The Constitution, though scarcely in the saddle, deserved to receive the confidence of the nation ; for this Constitution had not been hastily prepared, but had been submitted to the careful consideration of the statesmen and assemblies of every State composing the Confederation.

The  
Reichstag.

The Reichstag consisted of 297 members, elected by direct votes and by ballot. The number of representatives which each State sent was as follows : Prussia, 235 ; Saxony, 23 ; the part of Hesse north of the Main, 3 ; Mecklenburg-Schwerin, 6 ; Saxe Weimar, Oldenburg, Brunswick, and Hamburg, 3 each ; Saxe Meiningen and Coburg Gotha, 2 each ; and the remaining States, 1 each. The duration of each Parliament was for three years, and a session must be held every year. By the electoral law of

May 31, 1869, which is still in force, each State was divided into electoral districts of 100,000 souls, each district electing a deputy. If a State, after having been divided into districts of 100,000 souls, still had at least 50,000 electors remaining, then these could be formed into an electoral district, and put on the same footing as the larger district. States which did not number 100,000 inhabitants could nevertheless return a deputy. Seven States were in this condition. Each electoral district was subdivided into smaller sections for convenience of voting. The Federal Council was charged with the partition of the districts. The revision of the lists of electors was not, as in England, entrusted to a specially appointed officer, but the lists were submitted to the inspection of the public by the authorities, a fixed term of eight days being granted for the lodgment of objections.

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Electoral  
law of  
1869.

Every male subject of the North German Confederation who had passed his twenty-fifth year, and who lived in the section of the electoral district in which he wished to exercise his vote, was entitled to be an elector. There were certain exceptions, such as persons in active military service, those under guardianship or restraint, criminals, paupers, bankrupts, &c. The qualifications for a deputy were very simple. Every North German who had passed his twenty-fifth year, and who had been for at least a year a subject of one of the States which composed the North German Confederation, could be elected.

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The same rule applied to naturalized North German subjects. A deputy could be elected for any district irrespective of his domicile ; and there were but few exceptions to those who were qualified to be elected. Persons in active military service could be elected ; and the election of Government employés was allowed, they being released from their official duties during the session, but being permitted to retain their pay. Thudicum, in his ‘Verfassungsrecht des norddeutschen Bundes,’ gives as a reason for the admission of employés that self-government was so little developed in Germany that the employés were the only men who had a knowledge of public affairs. The question whether these employés should pay some one to fill their posts during their absence, or whether the State should do this, is not even yet satisfactorily settled. If a member of the Reichstag was appointed to a paid post under the Confederation, or under one of the States composing the Confederation, or if he received promotion to a higher paid post, he had to be re-elected. No one could be at the same time a member of the Federal Council and of the Reichstag. The members of the Reichstag were not paid, nor were they allowed to receive money granted to them by their own State for travelling expenses, &c. Attempts have been made to obtain the payment of the travelling expenses, but have proved unsuccessful. The disqualifications which applied to an elector applied equally to a deputy.

As before mentioned, the right of summoning,

proroguing, and dissolving the Reichstag was in the hands of the King of Prussia. Effect had to be given to a motion of the Federal Council for the dissolution of the Reichstag by the sanction of the King of Prussia. The elections had to take place within sixty days after the dissolution, and the newly-elected Reichstag had to meet within ninety days of the dissolution.

Article XXVIII. of the Constitution laid down that the Reichstag decided by an absolute majority of votes. The presence of at least half of the house was necessary to legalize any resolution. But this did not preclude debates being held on any subject, whatever might be the number of members present. The voting was taken either by standing up or by calling over the names. The Reichstag elected its own President, Vice-Presidents, and reporters, and the elections did not require the approval either of the Federal Council or of the head of the Confederation. The President, the two Vice-Presidents, and the eight reporters were elected for the duration of the Session. When a new Reichstag met, the President, Vice-Presidents, and reporters were elected for four weeks only at first, when their elections were confirmed for the rest of the session, or other members were selected in their places. At the first meeting of a new Reichstag the oldest member took the presidency till half of the members had had their elections confirmed, and had thus formed a house, when the election of the new President was

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proceeded with. At the commencement of a new session of a Reichstag, the past President presided till his successor was elected, or he himself re-elected. The same rules hold good in the cases of the Vice-Presidents and the reporters.

The President had much the same functions as the speaker of the House of Commons, except that he might attend the meetings of the sections and of the Committees of the House. The Vice-Presidents represented the President during his absence. The reporters drew up the minutes of proceedings, supervised the shorthand reports of the debates, read out the orders of the day, and acted as tellers in the divisions.

The sittings of the Reichstag were public, except that on the motion either of the President or of ten members the public could be excluded, and the motion for a secret sitting then discussed. The votes were taken by standing up, or if this test was doubtful, by calling over the names.

Sections  
and Com-  
mittees of  
the Reichs-  
tag.

As soon as the Reichstag met, seven sections, composed as nearly as possible of an equal number of members drawn by lot, were formed, to whom were entrusted the examination of the doubtful election cases, and the election of members of the Committees. The members of the Federal Council might attend the meetings of the sections, and have a deliberative voice.

The decision on the validity of an election rested with the Reichstag, and all petitions against elections

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had to be lodged within ten days after the meeting of the Parliament. Neither the sections nor the Reichstag had the power of examining witnesses, nor of calling for papers from the Government officials ; the most they could do was to request the Chancellor to cause an enquiry to be made into the disputed facts of an election case. The sections elected the members of the Committees, each section choosing an equal number. The Committees were occupied with matters relating to : 1. Mode of conducting parliamentary business ; 2. Petitions ; 3. Commerce and trade ; 4. Finances and customs ; 5. Questions respecting administration of justice ; 6. The Budget. The Reichstag might refer questions to their consideration, and when on the motion of a member a question was referred to a Committee, the mover had the right of a deliberative voice in the Committee, even though he was not a member of it. The Committees named reporters, who drew up reports on the questions which had been submitted for discussion. These reports were printed and circulated amongst the members of the Reichstag two days before the general discussion took place. The Chancellor was to be informed of the meeting of the Committees, and of the questions which they had under discussion.

Bills were laid before the Reichstag either by the Federal Council or by a member : in the latter case the bill had to be signed by at least fifteen members. Every bill must be read three times, and the first

Progress of  
bills  
through  
the  
Reichstag.

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reading had to take place on the third day after it had been printed and circulated. In the first reading only a debate on the general features of the bill took place, and it could not be thrown out before it had been submitted to a second reading. The bill after the first reading might be submitted to a committee, and the second reading was then postponed till the Committee had made its report. The second reading had to take place, either on the second day after the first reading, or on the second day after the report had been printed and circulated. The third reading took place on the second day after the second reading. If the Bill was passed, it was then sent to the Chancellor, and to become law it had to receive the assent of the Federal Council.

Power of  
Reichstag  
to initiate  
laws.

The Reichstag could initiate laws, with two exceptions. 1. It could not propose the admission of a South German State into the Confederation; and 2. It rested with the Chancellor, and not with the Reichstag, to take the initiative in applying the means afforded by law for settling a difficulty between the head of one of the German States and his assemblies on some constitutional question. The Federal Council itself could not interfere unasked in such cases; and some States—Oldenburg, Brunswick, Mecklenburg, Saxe-Coburg Gotha, and Saxe Altenburg—had special authorities who decided these questions. But as a rule bills were originated, and are still originated in the Federal Council. And it is natural that it should be so, as they are there more carefully

prepared, and by men more cognizant of the details of the special subject with which these bills are hereafter to deal.

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It will be observed how carefully the way was made ready for the admission of the South German States by the clause forbidding the Federal Council or the Reichstag taking the initiative in the matter. The admittance of a South German State had to be proposed by the head of the Confederation, and required only a simple majority of the Federal Council and of the Reichstag for the acceptance of the proposal, not a two-thirds majority of the Federal Council, as was the case in other fundamental changes in the Constitution. The whole Constitution of the North German Confederation was, in fact, framed with the intention of being easily adopted by the South German States, and we shall see hereafter in what small details the present Constitution differs from the one with which we are now engaged.

If a member of the Reichstag desired to put a question to the Federal Council he had to obtain the signature of thirty other members to his interpellation, which was then transmitted through the President to the Chancellor, who named a day for answering the question. No motion could be made on a question.

The person of every member during the session of the Reichstag was sacred, unless he was seized *flagrante delicto*, or on the day following the perpetration of some criminal act. If the Reichstag thought

Inviola-  
bility of  
the Mem-  
bers.

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fit to renounce its protection over a member, the latter could be arrested. A member of the Reichstag could not be called to account by any court of justice for any opinion he might express in the Reichstag, or in the sections or committees. The Reichstag itself had power to restrain the licence of tongue by the same means employed by most other representative assemblies.

Posts and telegraphs.

After the war of 1866 the administration of the posts and telegraphs was centralized as much as possible. Prince Thurn and Taxis, who had had the administration of the posts in eighteen of the smaller States, surrendered his rights to the King of Prussia for the sum of three millions of thalers. Saxony, the two Mecklenburgs, and Brunswick were the only States in the North German Confederation which possessed the right of nominating the inferior post employés in their territories. The telegraphs were placed almost entirely in the hands of the King of Prussia. Legislation with regard to the posts and telegraphs was within the province of the Federal Council and the Reichstag; but the administrative power was in the hands of the King of Prussia. A law to regulate the postal system of the whole of the Confederation was passed November 2, 1867. The King of Prussia named the post office and telegraph officials, and negotiated the postal treaties with foreign Powers. The expenditure on the post office and the telegraphs was deducted from the revenues, and the surplus placed in the Federal Chest. As, how-

ever, the net revenues in each State were so very unequal, it was determined to take the average net revenue in each State during the five years from 1861 to 1865 inclusive, and on that to calculate a percentage share which each State should have in the general net revenue of the Confederation. This share was to be deducted from the quota which each State had to pay into the Federal Chest for general Federal purposes. This arrangement was to last for eight years, after which time, the net revenue was to flow directly into the Federal treasury.

The railways were placed under the supervision <sup>Railways.</sup> and control of the central Power, and their management was taken out of the hands of the several States as much as possible. One system of weights and measures was established for the whole of the Confederation.

The finances of the Confederation were under the <sup>Finances.</sup> control of the Federal Council and of the Reichstag, with the exception of the excise on home-manufactured sugar, brandy, salt, beer, and tobacco, as the laws respecting these could not be altered against the wish of the King of Prussia. The Budget was brought in every year, and was passed by the Reichstag and Federal Council. The Chancellor was responsible for the proper disposal of the sums voted. If any supplementary sums were required, which the Budget had not provided for, then the Parliament had to be summoned to give their sanction to this extraordinary estimate. It may be worthy of remark that

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the Federal Council and the Reichstag were bound to take the organization of the Federal army into account when they voted the military estimates, and they were not permitted to refuse any vote which could in any way injure this organization. The military estimate was calculated at 225 thalers for each man, and by Article LXII. of the Constitution a sum of 67,433,400 thalers or 10,115,010*l.* (299,704 times 225 thalers) was obliged to be voted from July 1, 1867, to December 31, 1871. And this vote was to be continued until the peace establishment of the army was settled.<sup>1</sup>

The Confederation derived its revenues from the following sources :—

1. Those Customs dues which are set aside for Federal purposes, as well as the excise on those articles of consumption (that is on beet-sugar, salt, tobacco, beer, and brandy) which the Customs Union devoted to the Federal Chest.
2. The ‘Aversal-Summen,’ that is those sums which the parts of the Federal territory lying outside the limits of the Customs Union, have to pay to be exempted from the Customs dues.
3. The tax on exchange stamps. Each State deducts a certain percentage.
4. The revenues of the posts and telegraphs.
5. The fees which are paid to the Federal Court of appeal for commercial matters.

<sup>1</sup> In April 1874 the peace establishment was fixed at 401,659 men, for the term of seven years.

6. The fees received by the Federal Consuls.
7. The quotas which each State had to pay into the Federal Chest. These constitute about a third of the whole revenue. They were calculated on the number of the population, in fact a kind of poll tax. This was rather hard on largely-populated and poor countries, and too favourable for the small rich States. A deputy of the Reichstag pointed out the injustice of equally taxing 100,000 citizens of Bremen, and 100,000 inhabitants of the Thuringian forests. Some of the States procured some slight alleviations from these quotas.

The loan of 10,000,000 thalers, which was contracted in 1867, was placed under the direction of the Prussian National Debt Administration, and was supervised by the Chancellor, and by a committee of seven members elected by the Federal Council and the Reichstag.

A yearly account had to be rendered to the Federal Council and to the Reichstag, by the head of the Confederation, of the expenditure of the revenue.

Before closing these remarks on the Constitution of 1867, some mention must be made of the Customs Union.

The Customs Union established in 1865, for twelve years, and to which twenty-four States had given their adhesion, was considered dissolved by the war, yet it was determined to allow it to continue till some measures of reform had been decided

Customs  
Union.

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on. For North Germany it was, of course, no longer necessary, and the relations in which the South German States stood to it were capable of improvement. The machinery was complicated. It had been the custom for the representatives of the several States to meet in conference in the summer, when any of their resolutions were sanctioned by the Governments and ratified by the Assemblies. It happened only in one or two instances that the Assemblies of the States refused to ratify any resolution; but their right of veto existed, and reference to them delayed business. The equality of votes was again an injustice, and sometimes an inconvenience. Frankfort was on precisely the same footing as Prussia. After the war the whole of North Germany possessed but one legislation, exercised by the Federal Council and the Reichstag, for customs, commerce, and taxes. It was impossible, then, that the old Customs Union could have continued to exist; otherwise the South German States might have vetoed and hampered the legislative acts for the whole of North Germany. A congress, on the invitation of Count Bismarck, was held at Berlin in June 1867, when it was agreed to establish a Federal Commercial Council, and a Commercial Parliament for the whole of Germany; in fact, to form a Commercial Constitution, similar to the political Constitution of North Germany, and to render legislation in commercial matters independent of the political assemblies. The elections for these commercial bodies were con-

ducted in the same manner as those for the Federal Council and the Reichstag.

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The Government of the Customs Union consisted, then, of three bodies on the model of the North German Confederation, viz. of a Presidency, of a Federal Council, and of a Parliament. Laws required the assent of the majority of the Federal Council and of the Parliament, but no change could be made in the existing laws without the consent of the King of Prussia as President of the Union. The laws were not submitted to the assemblies of the several States. The Customs duties and taxes on the articles of consumption imposed by the Union were to last till December 31, 1877, unless the Customs Federal Council and the Customs Parliament altered them with the sanction of the King of Prussia. The publication of the treaties, laws, decrees, &c. of the Union was made by each State in its own manner, as there was no Gazette (Gesetz-Blatt) for the Customs Union. All that was required of each State was that these laws &c. should be published.

The Presidency of the Union was an attribute of the King of Prussia. He named the President of the Customs Federal Council, and the chief Customs officials. He had a veto, as mentioned above, in all resolutions which altered the existing laws, and also against the dissolution of the Customs Parliament. The summoning, proroguing, and dissolving of the Federal Council and Parliament were in his hands.

The Federal Council of the Customs Union was

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Federal  
Council.

composed of the members of the Federal Council of the North German Confederation, and the representatives of the four Southern States. The number amounted to fifty-eight in all; that is, forty-three from the North German Confederation, six from Bavaria, four from Würtemberg, three from Baden, and two from South Hesse. A representative of Prussia was to be President of the Council, but it was not necessary that he should be the Chancellor. The members of the Customs Federal Council enjoyed the same diplomatic privileges as those of the Federal Council of the North German Confederation, and could attend the meetings of the Customs Parliament. The Federal Council had to meet once a year, and was also to be summoned whenever the Customs Parliament met. The functions of the Federal Council were as follows. The assent of the Council was necessary to the laws issued by the Union, and without its consent, the King of Prussia could not conclude commercial and navigation treaties. It issued decrees and instructions with regard to the laws and treaties of the Union being carried into effect, and took cognizance of any defect in the executive machinery. In conjunction with the King of Prussia it could decree the dissolution of the Customs Parliament. A simple majority was required for the adoption of any measure.

There were three permanent Committees in the Customs Federal Council, one for commerce and trade, one for the customs and taxes, and one for

the accounts. Besides the head of the Union, at least four States must have representatives in each of these Committees, each State having one vote. The Council elected the members of these Committees for the ensuing session. It will be remembered that in the Federal Council of the North German Confederation there were Committees occupied with these matters. The Constitution had been drawn up and adopted before the negotiations for the new Customs Union had even commenced, and it was, of course, necessary to provide an administration for these important departments. The sphere of the Committees in the Customs Union was much larger than that of the Federal Council Committees, and the activity of the latter was now limited to the smaller commercial questions which affected the North German Confederation alone.

The Customs Parliament was composed of the Reichstag, and of eighty-five representatives elected by direct secret voting and universal suffrage, by the same electoral law as the Reichstag, from the South German States, in the following ratio: for Bavaria forty-eight, Würtemberg seventeen, Baden fourteen, South Hesse six. The South German States were allowed rather too free an interpretation of the electoral law, and a considerable amount of liberty in the partition of electoral districts, which in certain cases, especially in that of Würtemberg, led to some inconvenience. Baden appears to have been the State which kept the closest to the electoral law of

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1849. This was, no doubt, to be attributed to the strong national sympathies prevalent in this country. The other States only allowed a subject of the particular State to be elected, and would not permit a North German to be a deputy for any of their electoral districts. This was against the spirit of the law which regarded every subject of any State composing the Customs Union as eligible in any district which returned members to the Customs Parliament. It was not necessary that this Parliament should meet every year, but whenever its services were required, or when its convocation was demanded by a third of the voices in the Customs Federal Council. The same reasons disqualified a deputy for the Customs Parliament as did a deputy for the Reichstag ; and business was conducted in both chambers in precisely the same manner, except that the Customs Parliament had no Committees. The members of the Customs Parliament were not paid any salary.

The revenues which were derived from the Customs duties, and from the taxes on beet-sugar, tobacco, and salt, were divided between the North German Confederation and the South German States according to the number of their population. The taxes on brandy and beer in the South German States were in some cases lower, and in some higher than in the North German Confederation ; so these articles were not included among those to be taxed in common. Each State was charged with the

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—  
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collection of the duties and taxes within its own territory, but the instructions to the officials employed on this duty were issued from the central power.

The Customs law of January 23, 1838, and the Customs ordinance of the same date were united into one law called the Customs Union Law of July 1, 1869 ; and the Chancellor published the Customs tariff on October 1, 1870. There was also a Customs penal law.

Without having dwelt too much upon details it is hoped that some idea has been given of how North Germany was governed till the present Empire was established. We will now proceed to see what alterations the admission of the South German States produced in the Constitution of the North German Confederation.

The new German Empire consists of twenty-two monarchical and three republican States, as well as of the Imperial province of Alsace-Lorraine. The government of this province was placed in the hands of the Emperor, whose decrees, orders, &c. required to be countersigned by the Chancellor, who thereby takes upon himself the responsibility of the administration. The Constitution of the German Empire came into force in Alsace-Lorraine on January 1, 1873 ; but it was provided that certain portions of the Constitution could be introduced, with the consent of the Federal Council, before that date. Alsace-Lorraine, however, did not return members to Parliament till the introduction of the Constitution ; and she has no representatives in the Federal

Constitu-  
tion of  
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Council, being an Imperial province and not a State.

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Central  
power of  
the Empire.

The objects of the German Empire are stated to be: 1. The protection of the Imperial territory, and of the laws in force therein; and, 2. The care of the welfare of the German people. The central power now consists of an Emperor, a Federal Council, and a Parliament. The functions and attributes of these three estates are, with a few exceptions, similar to those enjoyed by the three estates of the North German Confederation.

The  
Emperor.

The German Imperial dignity vested in the Crown of Prussia for ever, and the laws which governed the succession to the throne in Prussia are also in force for the Imperial throne; that is to say, that the Imperial dignity is to be hereditary in the male line of the Royal Prussian house of Hohenzollern according to the law of primogeniture and of agnatic succession. Rönne, in his 'Verfassungs-Recht des Deutschen Reiches,' remarks that in the Constitution no provision is made in case of the Emperor being a minor. The Prussian law respecting the Regency could hardly be adopted for the whole of the Empire, though at the same time it would not be in accordance with the spirit of the Constitution to have different Regents for Prussia and for the Empire. In case of a Regency being necessary, a law appointing a Regent would, no doubt, have to be passed by the Federal Council and the Parliament.

As to the powers which the Emperor enjoys, they

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are the same as he possessed under the Constitution of the North German Confederation, with two rather important exceptions. These exceptions are :

1. The exclusive right to declare war is taken out of his hands, the consent of the Federal Council being now necessary. The Reichstag has, of course, an indirect influence with regard to a declaration of war, by having the power to refuse the supplies. 2. The right of ordering an execution in case of necessity, without previous reference to the Federal Council, is not reaffirmed in the new Constitution. There is rather an anomaly in placing the carrying out of an execution solely in the hands of the Emperor. For what would happen if the Federal Council found it necessary to order an execution in Prussia? Although the Emperor still possesses the right to declare a country or part of a country in a state of siege, he cannot apply the power thus given to him, to Bavaria. In other respects all his former rights remain unchanged, with a further exception to be hereafter mentioned.

The Federal Council was increased to fifty-eight members. Bavaria has six votes, Würtemberg four votes, Baden and Hesse three votes each. We will now see in what respects the Federal Council differed from that of 1867. Some alterations were made in the manner of voting. When a decision had to be arrived at on a subject which did not affect the whole Empire, those members alone were to vote who were concerned in the question. The two-thirds

Federal  
Council.

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majority was abolished. Questions which involve some fundamental alteration in the laws of the Constitution are rejected if fourteen voices vote against them. Owing to the increase in the number of the Federal Council, Prussia could not veto as formerly such questions with her seventeen votes ; and so some other means had to be found for giving her this power without increasing the number of her votes. In the absence of the Chancellor one of the representatives of Bavaria takes the presidency of the Council. The existing Committees of the Federal Council were not altered. Bavaria has a permanent seat in the Committee for the Army and Fortresses, while the other members are named by the Emperor. By the Treaty with Bavaria of November 23, 1870, a special Committee for Foreign Affairs was formed, consisting of the representatives of Bavaria, Saxony, and Würtemberg, under the presidency of Bavaria. In the countries where Bavaria maintained diplomatic representatives these latter were to be charged with the affairs of the Empire during the absence of the Imperial representatives. I am unaware that this privilege has ever been exercised by Bavaria. The Federal Council has also to prescribe the necessary orders and regulations for the enforcement of the laws, unless these laws contain some express provision to that effect. The Federal Council under the last Constitution did not possess so general a power, it being vested in the hands of the King of Prussia, from whom it was now withdrawn. A new, and by

no means an unimportant, field for legislation was opened to the Federal Council and the Reichstag by their being permitted to legislate in matters respecting the Press and right of meeting.

From the above it will be observed that some encroachment on the prerogatives of the head of the past Confederation was made by the Federal Council.

The Reichstag, or Parliament, now consists, with <sup>Reichstag.</sup> the fifteen Alsace-Lorraine deputies, of 397 members, of whom Prussia returns 235, Bavaria 48, Saxony 23, Würtemberg 17, Baden 14, Hesse 9, and the other States in a smaller proportion. The elections are conducted according to the Electoral Law of May 31, 1869, which has been mentioned elsewhere. The summoning, proroguing, and dissolving of Parliament, the mode of conducting the business, the formation of Committees and their functions, the elections of the President and other officers, and the manner of voting are all governed by precisely the same regulations as existed in the Reichstag of the North German Confederation. A similar rule to that which was introduced into the Federal Council—that votes on subjects which did not affect the whole Empire were given only by those members who were concerned in those questions—was applied also in the Parliament. A change was made in the rules respecting petitions, as the Parliament now has the right of forwarding the petitions which are addressed to them, to the Federal Council. Thus every subject of the Empire, if his representatives think fit, can

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come into direct communication with the Federal Council.

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Office of  
the Im-  
perial  
Chancellor.

The office of the Imperial Chancellor has now to deal with the following subjects: 1. All the affairs of the Empire are centred in it which do not come within the province of the Foreign Office. 2. It prepares the subjects which have to be laid before the Federal Council. 3. Questions of commercial policy. 4. The posts and telegraphs of the former North German Confederation and of Baden and Hesse. Those of Bavaria and Würtemberg remain at present under the administration of their own Governments. Article LII. of the Constitution lays down that 'the legislation respecting the immunities of the posts and telegraphs, respecting the legal relations of both these departments to the public, and respecting the postage, is in the hands of the central power. But the regulations and the tariff rules for the internal postal and telegraphic communication in Bavaria and Würtemberg are laid down by these countries themselves.'

'The regulations for the postal and telegraphic communication with the exterior are also under the central power, with the exception of those affecting the immediate communication of Bavaria and Würtemberg with the non-German States bordering on them, which are settled by Article 49 of the Postal Treaty of November 23, 1867.'

These two countries, therefore, enjoy the revenues accruing from their posts and telegraphs, but they have no share in the revenues which the

Posts and  
telegraphs.

Imperial Treasury derives from these sources. In the treaty with Bavaria it was agreed that, in postal and telegraphic treaties with non-German States, representatives from the neighbouring German States should be present for the protection of the particular interests of their countries ; and that each separate State should be allowed to conclude treaties of the above-mentioned character in so far as they only affected communication on the boundary (*Grenzverkehr*).

The office of the Imperial Chancellor had also to deal with : 5. The superintendence of the Imperial Debt ; with Customs and taxes, and the Finances. The Imperial Debt consists of loans contracted for the increase of the navy, for coast defence, for the mobilisation of the army, and for the expenses incurred in the Franco-German War. The Chancellor has the superintendence of it, and it is administered by a Committee of seven members, three of whom are chosen by the Federal Council, and three by the Parliament. 6. Those matters which were within the province of the head of the former Customs Union. By the entry of the South German States into the North German Confederation, and the formation of the Empire, the Customs Union, with its Council and Parliament, was of course rendered unnecessary ; and its functions were transferred to the Federal Council and the Parliament of the Empire. The Customs Union Law of July 1, 1869, the Customs Tariff of October 1, 1870, and the Customs Penal Law continued to remain in

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force. These laws were introduced into Alsace-Lorraine. Bavaria, Würtemberg, and Baden, however, retained the right of taxing their home-manufactured brandy and beer. 7. The administration of Alsace-Lorraine.

Military affairs.

The military and naval affairs of the Empire, with the exception of Bavaria, are administered by the Prussian War Office, and by the Prussian Admiralty, although these Ministries are not officially recognized as Imperial authorities. This abnormal condition of things is somewhat modified by the Committee of the Federal Council for the Army and Fortresses, which forms a kind of Imperial War Ministry. Würtemberg had to adopt the Prussian organization, but preserved the privilege of clothing her army on her own pattern, and of retaining the laws for the religious service in her army, and her military penal code. Her contingent forms one separate army corps, but is under the command of the German Emperor. Bavaria has to contribute the same quota as the other States to the Imperial Military chest; but this quota is kept apart, and the mode of expending it is left entirely to her. Her army is under the King of Bavaria during peace time, but on the mobilization of the Imperial troops on a war footing, the Emperor takes the command. She has to assimilate the organization, arming, &c., of her army to the system of the Imperial troops.

Railways.

The administration of the railways is, as formerly, in the hands of the central power, as far as regards

purposes of land defence and general communication; in fact, if a railway is considered necessary for these purposes it can be made without the consent of the State through whose territory it passes. Bavaria maintains the administration of her railways, excepting that she must make lines which are considered necessary for strategical purposes.

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The laws which concerned the right of settlement in a State and marriage, were among those of the North German Confederation which were not introduced into Bavaria.

With the exceptions and alterations above mentioned, the Constitution of the North German Confederation was accepted by the South German States. In the present Constitution, the Emperor has been shorn of a few prerogatives, and the power of the Federal Council has been slightly increased; while Prussia has succeeded in retaining in this Council the same, if not a greater influence, than she formerly possessed. The exceptional positions which in some matters Bavaria and, in a lesser degree, Würtemberg enjoy, will probably not be long maintained.

The form of the Constitution is peculiar—an Emperor who combines some of the attributes of an absolute, with those of a constitutional sovereign, ruling over States more or less independent, and who is hemmed in and rendered powerless in many respects, while in others he has unlimited scope;

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one responsible Minister, the Chancellor, whose responsibility is not very clearly defined; a Council of Representatives from the several States, with the functions of an administrative and of a legislative body, responsible to no one, acting upon instructions from their Governments, without reference to the representative assemblies of their respective countries; a Parliament elected on as broad a basis as possible, and yet not exercising to the full the functions which ordinarily belong to a great representative body.

He would be a bold prophet who would venture to foretell the future of this Constitution.





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